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A WORK OF UNIVERSAL REFERENCE

ON SUBJECTS OF  
CIVIL ADMINISTRATION, POLITICAL ECONOMY, FINANCE,  
COMMERCE, LAWS AND SOCIAL RELATIONS.

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IN FOUR VOLUMES.

VOL. IV.

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In speaking of this proceeding, Lord Ellenborough expressed his surprise "that a judge should have been questioned for having given a judgment which no other judge who ever sat in his place could have differed from."

In the case of *Ashby and White* so often referred to, the commons declared "that whoever shall presume to commence any action, and all attorneys, solicitors, counsellors, and serjeants-at-law soliciting, prosecuting, or pleading in any case, are guilty of a high breach of the privileges of this house." The effect of this resolution, if obeyed, would be to prevent the courts from coming to any decision at all upon matters of privilege, as an action would be stopped at its commencement; but the principle has not been adhered to.

When Sir Francis Burdett brought actions against the Speaker and the serjeant-at-arms, in 1810, for taking him to the Tower in obedience to the orders of the House of Commons, they were directed to plead, and the attorney-general received instructions to defend them. A committee at the same time reported a resolution "that the bringing these actions for acts done in obedience to the orders of the house is a breach of privilege," but it was not adopted by the house. The actions proceeded in the regular course, and the Court of King's Bench sustained and vindicated the authority of the house.

It has been already said that Stockdale's first action was brought when parliament was not sitting. Having no specific directions from the house, Messrs. Hansard pleaded to the action. On the general issue they proved the orders of the house, which were held to be no protection, but had judgment upon a plea which would have availed them equally had they printed the report complained of on their own account. Notwithstanding its resolutions, the house, on being acquainted with this action, instead of acting upon them when a second was commenced, reverted to the precedent of 1810, and directed Messrs. Hansard to plead, and the attorney-general to defend them. In this case nothing but the privileges of the House of Com-

mons were relied upon in defence of Messrs. Hansard, and the Court of Queen's Bench unanimously decided against them. Still the House of Commons was reluctant to act upon its own resolutions, and instead of punishing the plaintiff and his legal advisers, "under the special circumstances of the case," it ordered the damages and costs to be paid. The resolutions however were not rescinded, and it was then determined that in case of future actions, Messrs. Hansard should not plead at all; and that the parties should suffer for their contempt of the resolutions and authority of the house. Another action was brought by the same person and for the same publication. Messrs. Hansard did not plead, the judgment went against them by default, and the damages were assessed by a jury in the sheriff's court at 600*l*. The sheriffs of Middlesex levied for that amount, but having been served with copies of the resolutions of the house, they were anxious not to pay the money to Stockdale until they were unable to delay the payment any longer. At the opening of the session of parliament in 1840, the money was still in their hands. The House of Commons at once entered on the consideration of these proceedings, which had been carried on in spite of its resolutions, and in the first place committed Stockdale to the custody of the serjeant-at-arms. The sheriffs were desired to refund the money, and, on their refusal, were also committed. Mr. Howard, the solicitor of Mr. Stockdale, was suffered to escape with a reprimand. The sheriffs retained possession of the money until an attachment was issued from the Queen's Bench, when they paid it over to Stockdale. Stockdale, while in prison, commenced a fourth action by the same solicitor, and with him was committed to Newgate for the offence; and Messrs. Hansard were again ordered not to plead. Once more judgment was entered up against them, and a writ of inquiry of damages issued.

Mr. France, the under sheriff, upon whom the execution of this writ devolved, having been served with the resolutions of the commons, expressed, by petition, his anxiety to pay obedience to them, and sought the protection of

the house. He then obtained leave to show cause before the court of Queen's Bench on the fourth day of Easter term why the writ of inquiry should not be executed. Meanwhile the imprisonment of the plaintiff and his attorney did not prevent the prosecution of further actions. Mr. Howard's son, and his clerk, Mr. Pearce, having been concerned in conducting such actions, were committed for the contempt, and Messrs. Hansard, as before, were instructed not to plead. At length, as there appeared to be no probability of these vexatious actions being discontinued, a bill was introduced into the commons and passed, by which proceedings, criminal or civil, against persons for publication of papers printed by order of either house of parliament, are to be stayed by the courts, upon delivery of a certificate and affidavit to the effect that such publication is by order of parliament. (Act 3 & 4 Vict. c. 9.)

In executing the Speaker's warrant for taking Mr. Howard into custody, the messengers had remained some time in his house, for which he brought an action of trespass against them. As it was possible that they might have exceeded their authority, and as the right of the house of commit was not directly brought into question, the defendants were, in this case, instructed to plead; although a clause for staying further proceedings in the action was contained in the bill which was pending, at that time, in the house of lords; by whom however it was afterwards omitted: and the house of commons is still involved in litigation on account of the exercise of its privileges.

Mr. May remarks ('Law, Privileges, &c. of Parliament') that "The present position of privilege is, in the highest degree, unsatisfactory. Assertions of privilege are made in parliament, and denied in the courts; the officers who execute the orders of parliament are liable to vexatious actions, and if verdicts are obtained against them, the damages and costs are paid by the Treasury. The parties who bring such actions, instead of being prevented from proceeding with them by some legal process acknowledged by the courts, can only be coerced by an unpopular exercise of privilege,

which does not stay the actions. If parliament were to act strictly upon its own declarations, it would be forced to commit not only the parties, but their counsel and their attorneys, the judges and the sheriffs; and so great would be the injustice of punishing the public officers of justice for administering the law according to their consciences and oaths, that parliament would shrink from so violent an exertion of privilege. And again, the intermediate course adopted in the case of *Stockdale v. Hansard*, of coercing the sheriff for executing the judgment of the court, and allowing the judges who gave the obnoxious judgment to pass without censure, is inconsistent in principle, and betrays hesitation on the part of the house, distrust of its own authority, or fear of public opinion" (p. 129, 130).

#### *Forms of Procedure.*

*Meeting of Parliament: Preliminary Proceedings.*—On the meeting of a new parliament it is the practice for the lord chancellor, with other peers appointed by commission under the great seal for that purpose, to open the parliament by stating "that her Majesty will, as soon as the members of both houses shall be sworn, declare the causes of her calling this parliament; and it being necessary a Speaker of the house of commons should be first chosen, that you, gentlemen of the house of commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose here, to-morrow (at an hour stated) for her Majesty's royal approbation." The commons then proceed at once to the election of their Speaker. If any debate arises, the clerk at the table acts as Speaker, and standing up, points to the members as they rise. He also puts the question. When the speaker is chosen, his proposer and seconder conduct him to the chair, where, standing on the upper step, he thanks the house and takes his seat. It is usual for some members to congratulate him when he has taken the chair. As yet he is only Speaker elect, and as such presents himself on the

following day in the house of lords, when it has been customary for him to acquaint the lords commissioners that the choice of the commons has "fallen upon him," that he feels the difficulties of his high and arduous office, and that, "if it should be her Majesty's pleasure to disapprove of this choice, her majesty's faithful commons will at once select some other member of their house better qualified to fill the station than himself." It is stated by Hatsell, that there have been only two instances "in which neither this form, of having the royal permission to proceed to the election of a Speaker, nor the other, of the king's approbation of the person elected, have been observed. The first is the election of Sir Harbottle Grimstone, on the 25th of April, 1660, to be Speaker of the Convention Parliament which met at the Restoration; the other is the election of Mr. Powle, 22nd January, 1688-9, in the Convention Parliament at the Revolution." The only instance of the royal approbation being refused is in the case of Sir Edward Seymour in 1678. Sir John Topham indeed was chosen Speaker in 1450, but his excuse was admitted by the king, and another was chosen by the commons in his place. In order to avoid a similar proceeding on the part of the king, Sir Edward Seymour, who knew that it had been determined to accept his excuse, omitted the usual form. Of late years the speaker's address, upon this occasion, has been very considerably modified. (See May's 'Parliament,' p. 137.)

When the Speaker has been approved, he lays claim on behalf of the commons, "by humble petition, to all their ancient and undoubted rights and privileges," which being confirmed, the Speaker with the commons retires from the bar of the house of lords.

Both houses then proceed to take the oaths required by law. In the commons the Speaker takes them before any other member. Three or four days are usually occupied in this duty before the queen declares to both houses, in person or by commission, the causes of calling the parliament. From this time business proceeds regularly. The first thing usually done in both houses is to vote an ad-

dress in answer to the speech from the throne.

Before any business is undertaken, prayers are read; in the house of lords by a bishop, and in the commons by their chaplain. The lords usually meet at five o'clock in the afternoon, the commons at four.

*Conduct of Business, Divisions, &c.*—In the house of lords business may proceed when three peers are present, but forty members are required to assist in the deliberations of the lower house. If that number be not present at four o'clock in the afternoon, or if notice be taken, or if it appear on a division, that less than that number are present, the Speaker adjourns the house until the next sitting day. In both houses all questions are decided by a majority, but in the lords proxies are counted, while in the commons none may vote but those present in the house when the question is put by the Speaker or chairman. When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the lords, the party in favour of the question are called "content," and that opposed to it "not-content." In the commons these parties are described as the "ayes" and "noes." When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place. This is effected in the lords by sending the "contents" or "noncontents," as the case may be, to the other side of the bar, and leaving one party in the house. Each party is thus counted separately. The practice in the other house, until 1836, was to send one party forth into the lobby, the other remaining in the house. Two tellers for each party then counted the numbers, and reported them. In 1836 it was thought advisable to adopt some mode of recording the names of members who voted, and for this purpose several contrivances were proposed. The one adopted and now in operation is this:—There are two lobbies, one at each end of the house; and on a division the house is entirely cleared, one party being sent to each of the lobbies. Two clerks are stationed at each of the

entrances to the house, holding lists of the members in alphabetical order printed upon large sheets of thick pasteboard so as to avoid the trouble and delay of turning over pages. While the members are passing into the house again, the clerks place a mark against each of their names, and the tellers count the number. These sheets of pasteboard are sent off to the printer, who prints the marked names in their order; and the division lists are then delivered on the following morning together with the votes and proceedings of the house. This plan has been quite successful; the names are taken down with great accuracy, and very little delay is occasioned by the process.

In committees of the whole house, divisions are to be taken by the members of each party crossing over to the opposite side of the house, unless five members require that the names shall be noted in the usual manner; but practically no such distinction is now observed.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion and the grounds of it by a "protest," which is entered in the Journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the upper house, the lords are "summoned:" and in the house of commons an order is occasionally made that the house be called over, and members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they are still absent and no excuse be offered, they are sometimes committed to the custody of the serjeant-at-arms.

The business which occupies nearly the whole attention of both houses (if we except the hearing of appeals by the lords and the trial of controverted elections by the commons) is the passing of bills; and the mode of proceeding with respect to them may be briefly described in the first place.

### *Bills, Public and Private.*

Bills are divided into two classes—such as are of a public nature affecting the general interests of the state, and such as relate only to local or private

matters. The former are introduced directly by members; the latter are brought in upon petitions from the parties interested, after the necessary notices have been given, and all forms required by the standing orders have been complied with.

With few exceptions, public bills may originate in either house, unless they be for granting supplies of any kind, or involve directly or indirectly the levying or appropriation of any tax or fine upon the people. The exclusive right of the commons to deal with all legislation of this nature affects very extensively the practice of introducing private bills into either house. Thus, all those which authorise the levying of local tolls or rates are brought in upon petition to the lower house. These compose by far the greater part of all private bills. All measures of local improvement, whether for enclosing land, lighting, watching, and improving towns, establishing police, or making roads, bridges, railways, canals, or other public works, originate in the commons. On the other hand, many bills of a personal nature are always sent down from the lords, such as bills affecting private estates, and for dissolving marriages. As a question of principle it is perhaps unavoidable that so large a proportion of bills must begin in one house, but much obstruction to business and a very unequal division of labour are the results of the practice, which will be relieved, in some measure, by the arrangement already referred to (p. 459) in regard to railway bills. Bills affecting the peerage must originate in the lords, and acts of grace with the crown, where the prerogative of mercy is vested.

*Progress of Bills: Public Bills.*—In the house of lords any member may present a bill; and in the commons motions for leave to bring in bills of a public nature are not very frequently refused. The more usual time for opposing any measure in its progress is on the second reading, when all the provisions are known, and the general principle and effect of them may be considered. When leave is given to bring in a bill, certain members are ordered to prepare it, who are the proposer and seconder of the motion,



to whom others are sometimes added. It is then brought in and read a first time, and a day is fixed for the second reading, which generally leaves a sufficient interval for the printing and circulation of the bill.

It has been already said that the second reading is the occasion on which a bill is more particularly discussed. Its principle is at that time made the subject of discussion, and if it meet with approval, the bill is committed, either to a committee of the whole house or to a select committee, to consider its several provisions in detail. A committee of the whole house is in fact the house itself, in the absence of the Speaker from the chair; but the rule which allows members to speak as often as they think fit, instead of restricting them to a single speech, as at other times, affords great facilities for the careful examination and full discussion of details. The practice of referring bills of an intricate and technical description to select committees has become very prevalent of late years, and might be extended with advantage. Many bills are understood by a few members only, whose observations are listened to with impatience, and thus valuable suggestions are often withheld in the house, which in a committee might be embodied in the bill. By leaving such bills to a select committee, the house is enabled to attend to measures more generally interesting, while other business, of perhaps equal importance, is proceeding at the same time; and it has always the opportunity of revising amendments introduced by the committee.

Before a bill goes into committee there are certain blanks for dates, amount of penalties, &c., which are filled up in this stage. Bills of importance are often recommitted, or in other words, pass twice, and even in some instances three or four times through the committee. When the proceedings in committee are terminated, the bill is reported with the amendments to the house, on which occasion they are agreed to, amended, or disagreed to, as the case may be. If many amendments have been made, it is a common and very useful practice to reprint the bill before the report is taken

into consideration. After the report has been agreed to, the bill with the amendments is ordered to be engrossed previous to the third reading. A proposition was made not long since, but without success, for discontinuing the custom of engrossment upon parchment, and for using an examined copy of the printed bill, signed by the clerk of the house, for all the purposes for which the engrossed copy is now required.

The third reading is a stage of great importance, on which the entire measure is reviewed, and the house determines whether, after the amendments that have been made on previous stages, it is fit on the whole to pass and become law. The question, "that this bill do pass," which immediately succeeds the third reading, is usually no more than a form, but there have been occasions on which that question has been opposed, and even negatived. The title of the bill is settled last of all.

An interval of some days usually elapses between each of the principal stages of a bill; but when there is any particular cause for haste, and there is no opposition, these delays are dispensed with, and the bill is allowed to pass through several stages, and occasionally through all, on the same day.

This statement of the progress of bills applies equally to both houses of parliament. There is however a slight distinction in the title of a bill while pending in the lords, which is always entitled "an act," whether it has originated in the lords or has been brought up from the commons.

When the commons have passed a bill, they send it to the lords by one of their own members, who is usually accompanied by not less than eight other members. The lords send down bills by two masters in chancery; unless they relate to the crown or the royal family, in which case they are generally sent by two judges.

Some further information on this subject will be found under BILL IN PARLIAMENT.

*Private Bills.*—In deliberating upon private bills parliament may be considered as acting judicially as well as in its legislative capacity. The conflicting in-

terests of private parties, the rights of individuals, and the protection of the public have to be reconciled. Care must be taken, in furthering an apparently useful object, that injustice be not done to individuals, although the public may derive advantage from it. Vigilance and caution should be exercised lest parties professing to have the public interests in view should be establishing, under the protection of a statute, an injurious monopoly. The rights of landowners among themselves, and of the poor, must be scrutinised in passing an enclosure bill. Every description of interest is affected by the making of a railway. Land, houses, parks, and pleasure-grounds are sacrificed to the superior claim of public utility over private rights. The repugnance of some proprietors to permit the line to approach their estates—the eagerness of others to share in the bounty of the company and to receive treble the value of their land, embarrass the decision of parliament as to the real merits of the undertaking, which would be sufficiently difficult without such contentions. If a company receive authority to disturb the rights of persons not interested in their works, it is indispensable that ample security be taken that they are able to complete them so as to attain that public utility which alone justified the powers being intrusted to them. The imprudence of speculators is to be restrained, and unprofitable adventures discountenanced, or directed into channels of usefulness and profit. In short, parliament must be the umpire between all parties, and endeavour to reconcile all interests.

The inquiries that are necessary to be conducted in order to determine upon the merits of private bills are too extensive for the house to undertake, and it has therefore been usual to delegate them to committees. To prevent parties from being taken by surprise, the standing orders require certain notices to be given (to the public by advertisement, and to parties interested by personal service) of the intention to petition parliament. The first thing which is done by the commons on receiving the petition therefore is to inquire whether these notices have been properly given, and if all other

forms prescribed by the standing orders have been observed. This inquiry is confided to a committee, who report their determination to the house. It will be necessary here to explain the constitution of this committee. Until very recently it was the practice for the Speaker to prepare “lists” of members who were to form committees on bills relating to particular counties, in such a manner as to combine a fair proportion of members connected with the locality, with the representatives of places removed from any local influence or prejudice. Each of these lists consisted of upwards of a hundred members, any five of whom formed the committee. This system was liable to many objections. The number of the committee was too great to allow any responsibility to attach to the members. They were canvassed to vote by each of the opposing parties without having heard the evidence or arguments on either side; and were sometimes induced to crowd into the committee-room and reverse decisions which had been arrived at after long and patient inquiry. These evils led to an entire alteration of the system. All petitions for private bills are now referred to the same select committee which is appointed at the beginning of each session, and is composed of members whose habits of business and practical acquaintance with this branch of legislation constitute them a tribunal in every respect superior to the old list committees. To facilitate these proceedings they divide themselves into four or six sub-committees.

The report which this committee makes to the house is simply whether the standing orders have been complied with or not. If it be favourable, leave is at once given to bring in the bill; if not, it is referred to another committee also appointed at the beginning of the session, and called the “committee on standing orders,” whose province it is to inquire into the circumstances of the case, and report their opinion as to the propriety of dispensing with the standing orders, of requiring notices, or imposing new conditions. If this committee decide that the parties are not entitled to indulgence, it is still competent for the house to relax

its standing orders, as it does not by any means delegate its authority; yet in practice the report is final. Attempts are sometimes made to overrule it, but very rarely with success.

When nothing has occurred to obstruct the progress of the bill, it is read a first time; after which three clear days must elapse before the second reading, the bill being printed and delivered to members in the interval. The principle is now considered by the house, as in the case of public bills; and if the question for reading the bill be carried, it is then committed to a select committee. The constitution of committees on petitions has already been explained. While the list committees were resorted to, both the petition and the bill itself were referred to the same committee, but at present a new mode of appointing committees is in operation. It has been tried for a short time only, and must be tested by further experience before any decided opinion can be given upon its merits. The lists which have already been described are much reduced in number, and a committee of selection is appointed, to whom members upon the list must signify their intention to attend throughout the whole proceedings before they are permitted to vote. To these the committee of selection add a certain number of other members not locally interested, in such a proportion as they may think fit. Since 1844 committees upon railway bills consisting of five members only have been specially nominated by the committee of selection.

In committee, the bill, if opposed, undergoes a severe examination. Petitions against it are presented to the house and referred to the committee, who hear counsel and examine witnesses. The principle of the bill has been by no means established by the second reading, for the preamble is discussed in the committee, and if it be determined by them that it has not been proved, there is an end of the bill. The report is ordered to lie upon the table, and generally no further notice is taken of it. The house indeed seems to delegate its authority more entirely to the committee on a bill than to any other committee, as it allows them to decide

against a principle in favour of which it has already declared an opinion; however it has sometimes interfered in a manner which will be best explained by briefly detailing the cases. In 1836 the committee on the Durham (South-West) Railway Bill reported, according to the usual form, that the preamble had not been proved to their satisfaction; upon which they were ordered to re-assemble for the purpose of reporting specially the preamble, and the evidence and reasons in detail on which they had come to their resolution. The detailed report was accordingly made, but the decision of the committee was not further questioned. In 1837 the bills for making four distinct lines of railway to Brighton had been referred to one committee. An unprecedented contest arose among the promoters of the competing lines; and at length it was apprehended that all the bills would be lost by the combination of three of the parties against each of the lines on which the committee would have to determine separately. This consequence was prevented by an instruction to the committee to "make a special report of the engineering particulars of each of the lines, to enable the house to determine which to send back for the purpose of having the landowners heard and the clauses settled."

If the committee allow that the allegations of the preamble have been proved, they proceed to consider the bill clause by clause. But before we quit the subject of the preamble, the modern practice concerning railway bills may be adverted to. There are so many grounds upon which the preamble may fail to be proved, and so many points on which the committee should be informed before a just decision can be given, that in 1836 a rule was established which obliges the committee to report in detail. On receiving the report, the house is now acquainted with the chief particulars from which the expediency of the measure may be collected. The length of the line,—the probable expense of the works, and the sufficiency of the estimates,—the revenue expected from passengers and from agricultural produce or merchandise, with the grounds of the calculation,

—the engineering difficulties,—the gradients and curves, are all distinctly stated. This system might be extended, with great advantage, to other classes of bills; but is confined at present to railway bills alone. Much attention has been paid of late to the improvement of the modes of conducting private business, and it is not improbable that detailed reports may form part of the future recommendations of committees, on whom the task of suggesting further improvements may be imposed.

It has been said that public bills are occasionally referred to select committees; these however must also pass through a committee of the whole house. Private bills are committed to select committees only. Bills for divorces, by a standing order, were committed, like public bills, to committees of the whole house, until the 11th February, 1840, when an order was made for referring them to a select committee of nine members.

It will not be necessary to pursue any further the progress of private bills, which differs only from that already described in respect of bills of a public nature, in the necessity for certain specified intervals between each stage, and for notices in the private bill office.

In the House of Lords, when a private bill is unopposed, it is committed to the permanent chairman of committees, and any other peers may attend; but when a bill is to be opposed, the committee on standing orders inquires whether the standing orders have been complied with, and if so, the bill is referred to a committee of five appointed by a standing committee of five peers, to whom is confided the duty of selecting all committees on opposed bills, according to the circumstances of each case.

In order to ensure a proper acquaintance with the provisions of private bills, some of which are very voluminous, the House of Commons have lately adopted a rule requiring briefs of the bills to be laid before them six days before the second reading, and briefs of the amendments made by the committee, before the house take the report into consideration. These are prepared by the ex-

aminer of election recognizances and counsel to the speaker.

*Conferences between the two Houses.*—The progress of bills in each House of Parliament having been detailed, it still remains to describe the subsequent proceedings in case of difference between them. When a bill has been returned by either house to the other, with amendments which are disagreed to, a conference is desired by the house which disagrees to the amendment, to acquaint the other with the reasons for such disagreement; in order, to use the words of Hatsell, “that after considering those reasons, the house may be induced, either not to insist upon their amendments, or may, in their turn, assign such arguments for having made them, as may prevail upon the other house to agree to them. If the house which amend the bill are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is to desire another conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them; and if after such second conference the other house resolve to insist upon disagreeing to the amendments, they ought then to demand a ‘free conference,’ at which the arguments on both sides may be more amply and freely discussed. If this measure should prove ineffectual, and if, after several free conferences, neither house can be induced to depart from the point they originally insisted upon, nothing further can be done, and the bill must be lost.” An interesting occasion on which all these proceedings were successively adopted has recently occurred. A free conference had not been held since 1702, until a contest arose in 1836 upon amendments made by the lords to a bill for amending the Act for regulating Municipal Corporations.

Whether the conference be desired by the lords or by the commons, the lords have the sole right of appointing the time and place of meeting. The house that seeks the conference must clearly express in their message the subject upon which it is desired, and it is not granted as a

matter of course. There are many instances to be found in the Journals in which a conference has been refused, but not of late years. The reasons that are to be offered to the other house are prepared by a committee appointed for that purpose, who report them for the approval of the house. These reasons are generally very short, but in some cases arguments have been entered into at considerable length. The conference is conducted by "Managers" for both houses, who, on the part of the house desiring the conference, are the members of the committee who have drawn up the reasons, to whom others are occasionally added. Their duty is to read and deliver in the reasons with which they are intrusted to the managers of the other house, who report them to the house which they represent. At a free conference the managers on either side have more discretion vested in them, and may urge whatever arguments they think fit. A debate arose in the last free conference, to which we have just alluded, and the speeches of the managers were taken in short-hand and printed. While the conference is being held, the business of both houses is suspended until the return of the managers.

Amendments made to bills by either house are not the only occasions upon which conferences are demanded. Resolutions of importance, in which the concurrence of the other house is desired, are communicated in this manner. Reports of committees have also been communicated by means of a conference. In 1829 a conference was demanded by the commons to request an explanation of the circumstances under which a bill that had been amended by the lords had received the royal assent without being returned to the commons for their concurrence. The lords expressed their regret at the mistake, and stated that they had themselves been prepared to desire a conference upon the subject, when they received the message from the commons.

Conferences were formerly held in the Painted Chamber, but since the destruction of the houses of parliament by fire in 1834, that apartment has been appropriated to the sittings of the House of Peers,

and conferences now meet in one of the lords' committee rooms.

*Royal Assent to Bills.*—The form of giving the royal assent to bills has already been described. [ASSENT, ROYAL.]

*Committees.*—Committees are either "of the whole house" or "select." The former are in fact the house itself, with a chairman instead of the lord chancellor or Speaker presiding. There is a more free and unlimited power of debate when the house is in committee, as members may speak any number of times upon the same question, from which they are restrained on other occasions. Select committees are specially appointed, generally for inquiring into particular subjects connected with legislation. It is usual to give them the "power to send for persons, papers, and records;" but in case of any disobedience to their orders, they have no direct means of enforcing compliance, but must report the circumstances to the house, which will immediately interfere.

In case of an equality of voices, the chairman, who is chosen by the committee out of its own members, gives the casting vote. Some misconception appears to have existed as to the precise nature of the chairman's right of voting. In 1833 the House of Commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards, when the voices were equal, of giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the house that, according to the established rules of parliament, the chairman of a select committee can only vote when there is an equality of voices. (91 *Commons' Journals* p. 214.) This error was very probably occasioned by the practice of election committees, which was however confined to them, and only existed under the provisions of acts of parliament.

In 1837 some regulations were made by the House of Commons for rendering select committees more efficient and responsible. The number of members on a committee was limited to fifteen. Lists of their names are to be affixed in some conspicuous place in the committee-

clerk's office and the lobby. Members moving for the committee are to ascertain whether the gentlemen they propose to name will attend. To every question asked of a witness, the name of the member who asks it is prefixed in the minutes of evidence laid before the house; and the names of the members present at each sitting, and, in the event of any division, the question proposed, the name of the proposer, and the votes of each member, are entered on the minutes and reported to the house.

*Trial of Election Petitions.*—The mode of proceeding in contested elections is explained in the article ELECTION COMMITTEES.

*Impeachment.*—Impeachment by the commons is a proceeding of great importance, involving the exercise of the highest judicial powers by parliament, and though in modern times it has rarely been resorted to, in former periods of our history it was of frequent occurrence. The earliest instance of impeachment by the commons at the bar of the house of lords was in the reign of Edward III. (1376). Before that time the lords appear to have tried both peers and commoners for great public offences, but not upon complaints addressed to them by the commons. During the next four reigns, cases of regular impeachment were frequent, but no instances occurred in the reigns of Edward IV., Henry VII., Henry VIII., Edward VI., Queen Mary, or Queen Elizabeth. The institution "had fallen into disuse," says Mr. Hallam, "partly from the loss of that control which the commons had obtained under Richard II and the Lancastrian kings, and partly from the preference the Tudor princes had given to bills of attainder or of pains and penalties, when they wished to turn the arm of parliament against an obnoxious subject." Prosecutions also in the Star-chamber during that time were perpetually resorted to by the crown for the punishment of state offenders. In the reign of James I. the practice of impeachment was revived, and was used with great energy by the commons, both as an instrument of popular power and for the furtherance of public justice. Between the year 1620, when Sir Giles

Montessor and Lord Bacon were impeached, and the Revolution in 1688, there are about 40 cases of impeachment. In the reigns of William III., Anne, and George I. there were 15, and in George II. only one (that of Lord Lovat, in 1746, for high treason). The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

An outline of the forms observed in the conduct of impeachments may be briefly given. A member of the house of commons charges the accused of certain high crimes and misdemeanors, and moves that he be impeached. If the house agree to it, the member is ordered to go to the lords, and at their bar, in the name of the house of commons and of all the commons of the United Kingdom, to impeach the accused. A committee is then ordered to draw up articles of impeachment, which are reported to the house, and having been discussed and agreed upon, are engrossed and delivered to the lords. Further articles may be delivered from time to time. In the case of Warren Hastings the articles had been prepared before his impeachment at the bar of the house of lords. The accused sends answers to each article, which are communicated to the commons by the lords; to these, replications are returned if necessary. After these preliminaries, the lords appoint a day for the trial. The commons desire the lords to summon the witnesses required to prove their charges and appoint managers to conduct the proceedings. Westminster Hall has been usually fitted up as the court, which is presided over by the lord high steward. The commons attend with the managers as a committee of the whole house. The accused remains in the custody of the usher of the black rod, to whom he is delivered, if a commoner, by the serjeant-at-arms attending the house of commons. The managers should confine themselves to charges contained in the articles of impeachment. Mr Warren Hastings complained of matters having been introduced which had not been originally laid to his charge, and the house resolved that certain words ought not to have been spoken by Mr. Burke. Persons impeached of

high treason are entitled, by statute 20 Geo. II. c. 30, to make their full defence by counsel, a privilege which is not denied to persons charged with high crimes and misdemeanors.

When the managers have made their charges and adduced evidence in support of them, the accused answers them, and the managers have a right to reply. The lords then proceed to judgment in this manner:—The lord high steward puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers in succession rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breast, answer “guilty,” or “not guilty,” as the case may be, “upon my honour.” Each article is proceeded with separately in the same manner, the lord high steward giving his own opinion the last. The numbers are then cast up, and being ascertained, are declared by the lord high steward to the lords, and the accused is acquainted with the result.

(Coke's *Fourth Institute*, cap. 1; *The Sovereign Power of Parliaments*, by W. Prynne, 1643; *Parliamentary Writs*, by W. Prynne, in four parts, 1659-1664; *Privileges of the Baronage of England when they sit in Parliament*, by John Selden, 12mo., 1642; *Modus tenendi Parliamentum*, by W. Hakewel, 1660; *Lex Parliamentaria*, by G. P., Esq., 12mo. 1690; *Constitution of Parliaments in England, deduced from the time of King Edward the Second*, by Sir John Pettus, 1680; *Original Institution, Power, and Jurisdiction of Parliaments*, by Sir M. Hale, 1707; republished by Hargrave, with preface, 1776; *Antient Right of the Commons of England*, by William Petyt, 1680; *Parliamentary and Political Tracts*, written by Sir Robert Atkins, 2nd edit., 1741; *History of the High Court of Parliament*, by T. Gurdon, 1731; *Manner of holding Parliaments in England*, by Henry Elsynge, Cler. Parl., 1768; *Free Parliaments*, by Roger Acherley, 1731; Blackstone's *Comm.*, book 1st; D'Ewes's *Journal*; *Lords' Journals*; *Commons' Journals*; *General Indexes and Calendars to Lords' Journals*, 1509-

1819; *General Indexes to Commons' Journals*, 1547-1837; *Trial of Henry Lord Viscount Melville*, published by order of the House of Lords, fol., 1806; *State Trials*; *Parliamentary History*; Wynn's *Argument upon the Jurisdiction of the Commons to commit*, 1810; Hattell's *Precedents*, new edit., 1818; *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*, by Thomas Erskine May, Esq., Barrister at Law, Assistant Librarian of the House of Commons. May 2nd. 1844.)

#### PARLIAMENT OF IRELAND.

In Ireland, as in England, from the conquest of the country by Henry II. in the latter part of the twelfth century, meetings of the barons were occasionally summoned to consult on public affairs, to which the old historians sometimes give the name of parliaments. But parliaments, in the modern sense, cannot be traced back in Ireland farther than to the latter end of the thirteenth century, or to a date about thirty years subsequent to that of the earliest parliament which is ascertained to have consisted both of lords and commons in England. Simon de Montfort's parliament, the first for which writs are extant summoning representatives of the counties and boroughs, met at Westminster in 1265, and the first Irish parliament to which, as far as is known, the sheriffs were directed to return two representatives for each county, was held in 1295. Representatives of boroughs in Ireland cannot be traced much farther back than to the middle of the fourteenth century. They first make their appearance in 1341, and in an act or ordinance of 1359 they are spoken of as forming an essential part of the parliament.

At this time however and down to a much lower date it was only the small portion of Ireland occupied by the English settlers that was represented in the legislature. Even in the reign of Edward III. only the province of Munster and a part of Leinster were considered as shireland: they were divided into twelve counties. But in the course of the fifteenth century the greater part of these districts had become independent of the English crown; and in the reign of Henry

VII. the English dominion and the parliamentary representation were alike confined to the counties composing what was called the Pale, that is, to those of Dublin, Louth, Kildare, and Meath (then comprehending both East and West Meath), with a very few seaports beyond these limits. The vigorous measures taken under Henry VIII. and succeeding kings however gradually extended the authority of the English institutions and laws. The possessors of some of the original Irish peerages, after maintaining for centuries an independence as complete as that of the native chieftains themselves, were induced to attend the house of lords, and many new peerages were conferred, some on Englishmen or persons of English descent, some on the heads of the old Irish families. The twelve ancient counties were all reclaimed in the reign of Henry VIII., and others were added by Mary, Elizabeth, and James, till, in the time of the last-mentioned king, the whole island was divided into thirty-two counties, as at present, each returning two representatives. Of these thirty-two counties however it is said there were seventeen in which there was not a single parliamentary borough, while in the remaining fifteen there were only about thirty. But either this account must be wrong or the common statement that James added only forty new boroughs must be an under statement, if, as appears, the entire number of the Irish commons in 1613 was 232. In this number however would be included the two representatives of Trinity College, Dublin. Subsequent new charters to boroughs augmented the house by the year 1692 to 300, at which number it remained stationary. In 1634 the number of peers was 122, and more than 500 Irish peerages were created between that date and the Union. Some however also became extinct.

It was only for a very short period of its existence that the Irish parliament was held to be a supreme legislature. Ireland being regarded as a conquered dependency, it was maintained that its parliament was in all respects subordinate to that of England, and subsequently to that of Great Britain, which might make laws

to bind the people of the one country as well as of the other. The received legal doctrine used to be, that King John, in the twelfth year of his reign (A.D. 1210), ordained by letters-patent, in right of the dominion of conquest, that Ireland should be governed by the laws of England; in consequence of which both the common law of England and all English statutes enacted prior to that date were held to be of the same authority in Ireland as in England. With regard to English acts passed subsequently to that date, it was also held, in the first place, that Ireland was bound by all of them in which it was either specially named or included under general words. But further, inasmuch as one of the Irish acts called Poyning's Laws, passed in the tenth year of Henry VII. (A.D. 1495), in the lord-lieutenancy of Sir Edward Poyning, or Poynings, declared that all statutes "lately" made in England should be deemed also good and effectual in Ireland, it was held that this established the authority in Ireland of all preceding English statutes whatsoever; making those enacted since the 12th of John of the same force with those enacted before that date. This however was admitted to be the last general imposition of the laws of England upon Ireland. Of the English statutes passed since the 10th of Henry VII., it was allowed that those only were binding upon Ireland in which that country was specially named or included under general words.

The above-mentioned was only one of Poyning's laws. The substance of some others is given by Blackstone (1 *Com.*, 102); which prevented any laws from being proposed, except only such as were drawn up before the parliament which should pass them as in being; but by the 3 & 4 Philip and Mary, c. 4, it was provided that any new propositions might be certified to England for approval, even after the summons and during the session of parliament. Still this left to the parliament of Ireland nothing more than merely the power of rejecting any law proposed to it; it could neither initiate a new law nor repeal an old one, nor even amend or alter that which was offered for its acceptance. In practice however,



the letter of the statute was somewhat relaxed. Blackstone goes on to state that the practice in his day (some years after the middle of the last century) was, "that bills are often framed in either house, under the denomination of 'heads for a bill or bills,' and in that shape they are offered to the consideration of the lord-lieutenant and privy council, who, upon such parliamentary intimation, or otherwise upon the application of private persons, receive and transmit such heads, or reject them without any transmission to England." These heads of bills however really differed in nothing from bills or acts of parliament, except that, instead of the words "Be it enacted," the formal commencement of each paragraph or clause was, "We pray that it may be enacted:" and the motion for presenting them scarcely differed, except in form, from the motion in the English House of Commons for leave to bring in a bill, a motion necessary in all cases to be assented to or carried in the affirmative before the actual bringing in of any bill. And as for the consent of the crown or the government, which it was necessary to obtain before either house of the Irish parliament could take up the consideration of any proposed law, with a view to its enactment, that would in practice probably be found to operate much in the same way with the assent of the crown, which even in England was necessary to give validity to any bill after it had passed both houses. In the Irish as well as in the English parliament there was in fact an opportunity of discussing the proposition without the permission of the crown. An English as well as an Irish bill required the assent of the crown before it could become law. The practice of presenting heads of bills however was not introduced into the Irish parliament till after the Revolution of 1688.

But the dependence of Ireland upon the English crown, and the consequent subordination of the Irish legislature, were held to go still farther than to the establishment of the principle that laws might be made by the parliament of England to bind Ireland. The Irish House of Lords had entertained writs of error upon judgments in the courts of common

law from the reign of Charles I., and appeals in equity from the Restoration. Nevertheless, in the year 1719, a judgment in the Court of Exchequer having been reversed by the House of Lords, the question was carried to the House of Lords of Great Britain, by which the judgment of the Court of Exchequer was affirmed.

On this the Irish House of Lords resolved that no appeal lay from the Court of Exchequer in Ireland to the parliament of Great Britain. But this resolution was immediately met by an act of the British parliament, the 5 Geo. I. c. 1, declaring that "the king's majesty, by and with the advice and consent of the lords spiritual and temporal of Great Britain in parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland; and that the House of Lords in Ireland have not nor of right ought to have any jurisdiction to judge of, reverse, or affirm any judgment, sentence, or decree given or made in any court within the said kingdom; and that all proceedings before the said House of Lords upon any such judgment, sentence, or decree are and are hereby declared to be utterly null and void to all intents and purposes whatsoever."

In this state the law remained till the year 1782. In that year the statute 5 Geo. I. c. 1, was repealed by the 22 Geo. III c. 53; and the following year the 23 Geo. III. c. 28, declared the exclusive authority of the Irish parliament and courts of justice in all matters of legislation and judicature for Ireland. Finally, in 1800, by the Act of Union, the 39 & 40 Geo. III. c. 67, the Irish parliament was extinguished, and it was enacted that the United Kingdom should be represented in one and the same parliament, to be called the parliament of the United Kingdom of Great Britain and Ireland. [PARLIAMENT.]

The earliest Irish statutes on record are of the year 1310; but from that date there are none till the year 1429, from which time there is a regular series. The whole have been printed, and there are

also abridgments by Bullingbroke and Belcher, Hunt, and others.

(Lord Mountmorres's *History of the Irish Parliament*; Blackstone's *Commentaries*; Oldfield's *Representative History of Great Britain and Ireland*; Wakefield's *Account of Ireland, Statistical and Political*; Hallam's *Constitutional History of England*.)

**PAROCHIAL REGISTERS.** [REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.]

**PAROL.** This term, which signifies "a word," has been adopted from the Norman-French as a term of art in English law, to denote verbal or oral proceedings, as distinguished from matters which have been recorded in public tribunals or otherwise reduced to writing. Thus a parol contract is an agreement by word of mouth, as opposed to a contract by deed. Parol evidence is the testimony of witnesses given orally, as opposed to records or written instruments. This is the popular acceptance of parol, but, strictly speaking, everything, even in writing, is parol which is not under seal.

The formal allegations of the parties to a suit in the common law courts, called pleadings, which are now made in writing, were formerly conducted orally at the bar, and in the year-books are commonly denominated the parol. Hence in certain actions brought by or against an infant, either party may suggest the fact of the infancy, and pray that the proceedings may be stayed; and where such a suggestion was complied with, the technical phrase was that the "parol demurred" (*d'moratus*), that is, the pleadings were suspended until the infant had attained his full age.

**PARSON.** [BENEFICE, p. 341.]

**PARTNERSHIP.** If two or more persons join together their money, goods, labour, and skill, or any or all of them, for the purpose of buying and selling, and agree that the gain or loss shall be divided among them, that is a partnership. The object of the partnership may be any thing that is lawful. Any agreement of partnership for an unlawful object is no agreement. The English law of partnership is founded on the common

law, the so-called law of merchants, and the Roman law. By the common law a partner has no power to bind his co-partner by deed. By the law of merchants he has power to bind his co-partner by a bill of exchange, and there is no survivorship in the partnership stock. From the Roman law is derived the principle that a partnership (*societas*) is terminated by the death of a partner. (Gaius, iii. 155.)

No writing is necessary to constitute a partnership. The acts of the parties, when there is no partnership contract in writing, are the evidence of the contract. Partners may be either ostensible, nominal, or dormant. He whose name appears to the world as a partner is an ostensible partner. An ostensible partner may or may not have an interest in the concern; if he has no interest in the concern, but allows his name to appear as one of the firm, he is a nominal partner; if his name and transactions as a partner are purposely concealed from the world, he is a dormant partner. But if his name and transactions are actually unknown to the world, he is more properly termed a secret partner. Generally speaking, any number of persons may be partners, but there are some exceptions. [BANK; JOINT-STOCK COMPANY.]

Any person of sound mind and not under any legal disability may be a partner. An infant may enter into this, as into any other trading contract which may possibly turn out to his advantage. It may however be avoided by him on coming of age, though the person with whom he contracts will be bound. An alien friend may be a trader and sue in personal actions, and may therefore be a partner. But an Englishman domiciled in a foreign country at war with England, or an alien enemy, cannot be a partner with a person in this country; at least he cannot sue in this country for a debt due to the firm. Married women are incapacitated from entering into the contract of partnership; and although they are sometimes entitled to shares in banking-houses and other mercantile concerns, yet in these cases their husbands are entitled to such shares, and become partners. If parties share in the profit and

loss, they are partners, although one may bring into the trade money, another goods, and a third labour and skill, which was also the rule of the Roman law (Gaius, iii. 149); and where one party is sole owner of goods and another sole disposer or manager of them, if they share the profits, they are partners. Every man who has a share of the profits of a trade must also bear his share of the loss; for a right to a share of the profit implies a liability to bear a share of the loss. Yet one partner may stipulate with the other partners to be free from all liability to loss, and such stipulation will hold good between himself and his partners, which was also the rule of the Roman law, though he will still be liable to all those who have dealt with the firm of which he is a member. Persons who jointly purchase goods are not partners, unless they are jointly concerned in the profit or the produce arising from the sale of them. Partnership accordingly includes the notion of joint buying and joint selling for the purpose of making profit. The division of profits between or among partners may be in any proportions that they agree upon. To constitute a man a partner on the ground of sharing profits, he must have an interest in the profits, as a principal in the firm; if he only receive a portion of the profits, by way of payment for his labour, trouble, or skill as a servant or agent of the concern, he is not a partner. Sometimes there may be a difficulty in determining whether a person is such a sharer in profits, according to the legal meaning of that term, as will make him a partner and consequently liable to bear his share of any loss.

If persons share the profits of a trade, it is presumed that they are partners, and as such, liable to all who deal with the firm, whatever be the private agreement among themselves. But they may repel the presumption of partnership by showing that the legal relation of partnership among themselves does not exist. If a person allow his name to be used in a business or in any other way consent to appear as a partner, he will be so considered with respect to other persons, whatever may be his agreement with the firm; and

he will be equally responsible to third parties with the other partners, although he may not receive or be entitled to receive any of the profits. The ground of this rule of law is clear and reasonable: a person must be considered bound by a contract, if he act in such a way as to make other contracting parties believe that he is a party to the contract; and such is the case with a man who allows his name to appear as a member of a firm, as to all contracts and dealings which are necessary for carrying on the business of the firm.

A partnership at will is one which continues as long as the parties live and are able and willing to continue it; a partnership for a fixed term continues for the term if the parties live and are of legal capacity to continue it. A partnership at will may be dissolved at any time by the expressed will of any member of it, a rule which is derived from the Roman law, and which is a necessary consequence of the nature of the partnership contract. In such case the partnership is dissolved immediately upon notice given by any of the partners. The effect of such dissolution is to stop all new partnership dealings or contracts; but the partnership still continues for the purpose of completing all contracts already made, and all dealings or undertakings already commenced. On such dissolution, any partner is entitled to have the whole partnership stock, and the interest in the premises on which the business is carried on, converted into money, and to receive his share of the produce. In all cases, by the natural death of a partner, the partnership is dissolved, a rule also derived from the Roman law, as already stated; it is also dissolved by a partner's civil death, as his outlawry, or attainder for treason or felony; and strictly speaking, the whole property is forfeited to the crown; for the king never becomes joint tenant, or tenant in common with the other partner, and he is entitled to the whole; but this right is seldom enforced against creditors or innocent partners. A marriage of a feme-sole trader is also a dissolution of a partnership at will. A partnership for a term may be dissolved before its expiration by the mu-

tuai consent of the parties, by the decree of a court of equity, or by the bankruptcy, outlawry, or felony of any of the partners. A court of equity will in some cases dissolve a partnership on the ground of incurable insanity in one of the partnership. A partner may agree that upon his death the business may be carried on beyond the legal period of dissolution in the hands of his children or other third parties, but this is properly an agreement for a new partnership. Partners cannot be relieved from future liabilities to third parties without notice to them and to the world in general that the partnership has ceased; but in the case of a dormant partner, if none of the creditors know that he is a partner, no notice of his retirement from the firm is necessary; and if it be known to some, notice to such only will be sufficient. On the death of a partner, notice of the dissolution to third parties is unnecessary.

Partners are joint-tenants in the stock and all effects; yet upon the decease of a partner, his personal representatives become entitled to his share of the moveable stock and effects, and they thereupon become in equity, and, as it has been said, at law, tenants in common with the surviving partners. If, as is generally the case in the purchase of lands for the purposes of a partnership, they are conveyed to the partners as tenants in common, and one of the partners should die intestate, the legal estate in his share will descend to his heir, who will be tenant in common with the other partners. If the lands were conveyed to them as joint tenants, there will be no survivorship in equity; and it becomes then a question whether, upon the death of a joint trader, who, with his partners, has so purchased lands for the purpose of the trade, his share will descend for the benefit of his heir or his next of kin; and the better opinion seems to be, although the point has never been decided, that although the legal estate in freehold property purchased by partners for the purposes of their trade will go in the ordinary course of descent, yet the equitable interest will be held to be part of the partnership stock, and distributable as personal estate. Purchased lands may be conveyed so as to be always held as

real estate, and descend to the heirs of the several partners.

Any fraud on the part of one partner, either by misapplication of the partnership fund or in any other way, is a matter of which a court of equity will take cognizance. No partner has a right to engage in any business or speculation which must necessarily deprive the partnership of his time, skill, and labour, because it is the duty of each to devote himself to the interest of the firm. It is the duty of each partner to keep precise accounts, and to have them always ready for the inspection of his co-partner. Each partner is liable to the performance of all contracts of his co-partners, in the same manner as if entered into personally by himself, provided they relate to matters which are within the objects and purposes of the partnership. If the parties to the contract of partnership do not regulate it by express stipulation, the contract will be interpreted according to the established rules of law that are applicable to it. Though partners may have entered into a written agreement which specifies the terms on which the joint concern is to be carried on, yet if the partnership business be regularly conducted in any respect contrary to those terms, it is a legal conclusion that the partners have, so far as the change extends, changed their terms of agreement. For instance, if the agreement be that no partner shall draw or accept a bill of exchange in his own name, without the concurrence of all the others, yet if they afterwards adopt a practice of permitting one of them to draw or accept bills without the concurrence of the others, it will be held that they have so far varied the terms of the original agreement.

One partner may maintain an action of covenant against his co-partner, whether the covenant be for the payment of money or the performance of any act for commencing or establishing the partnership, or for the performance of any of the articles after the partnership has commenced; and if adequate compensation for the breach cannot be had at law, a court of equity will enforce a specific performance of the covenant itself. Courts of law do not allow actions of debt by one

partner against another for money due upon simple contract, as for money laid out by one partner for the purposes of the partnership. The partner who is aggrieved must therefore enforce his remedy by action of account, or by an application to a court of equity, by filing a bill for an account and a dissolution of the partnership. A partner cannot maintain an action of debt against his co-partner for work and labour performed, or money expended on account of the partnership; if therefore he has a claim upon a co-partner for a sum of money due on account of the partnership, but not constituting the balance of a separate account, or a general balance of all accounts, his only mode of recovering the amount is by an action of account, or by a bill in a court of equity praying for an account, and usually also for a dissolution. If it turn out that an undertaking is impracticable, as if a machine, for the working of which the partnership was entered into, will not answer the purposes intended, and so the object of the parties is frustrated, or if either party commit fraud or gross acts of carelessness or waste in the administration of the partnership, the party aggrieved has a right to a dissolution, and the same will be decreed in equity. A partner is also entitled to an account of the partnership assets against his co-partner, but it was formerly held that he could not have it pending the partnership. If therefore he filed his bill for an account, it was also necessary to pray for a dissolution. It is now considered that a partner may have such an account on stating a proper case, without asking for a dissolution; but considering the circumstances under which a partner files a bill for an account of partnership dealings, it will seldom happen that it will be his interest not to pray for a dissolution of the partnership. Where one partner has committed such breaches of duty as would warrant a decree for a dissolution, a court of equity will interfere summarily by injunction: as where one partner has involved the partnership in debt, or has himself become insolvent, the court will restrain him from drawing, accepting, or indorsing bills in the name of the firm, from receiving the partner-

ship debts, and from continuing to carry on the business by entering into new contracts. It will also restrain an action brought by one partner against his co-partner on a separate and private account upon payment by the latter of the money into court. So it will restrain the application of the partnership property to a use not warranted by the articles; or an execution against the partnership property for the separate debt of one partner. A court of equity will appoint a receiver where one partner excludes another from taking such part in the concern as he is entitled to take, and will do this even with a view to the continuation of the co-partnership, if it is for the benefit of the complaining partner, although such a step is usually taken with a view to a dissolution and winding up of the partnership affairs. Whether the party applying for a receiver wish a continuance or dissolution of the partnership, he must make out such a case to induce the court to interfere as would authorise a decree for a dissolution.

Generally speaking, one partner has an implied authority to bind the firm by contracts relating to the partnership, and he can do this by mere verbal or written agreements, or by negotiable securities, such as bills of exchange and promissory notes. One partner may pledge the credit of the firm to any amount; but there are some exceptions to this rule. A dormant partner is in all cases liable for the contracts of the firm during the time that he is actually a partner; and a nominal partner is in the same manner liable during the time that he holds himself out to the world as a partner. A partner will be liable in respect of a fraud committed by his co-partner, if committed in the capacity of partner, in contracts relating to the co-partnership, made with third persons. Thus if a partner purchase goods such as are used in the business, and fraudulently convert them to his own use, the innocent partner, provided there be no collusion between the seller and the buyer, is liable for the price of the articles. One partner has no implied authority to bind his co-partner by deed, yet if he execute a deed on behalf of the firm, in the presence of and with the consent of his co-partners, it will bind the

firm. It seems that a release by one of several partners to a debtor of the firm binds the firm; but if such release be fraudulent, it will be set aside by a court of equity; and even a court of law will interfere to prevent a fraudulent release from being pleaded.

Where no time is mentioned in the deed of partnership for its commencement, the liabilities of the firm will commence from the date of the deed; but in adventures, unless the parties have previously held themselves out as partners, the liabilities commence from the time fixed by the contract. An in-coming partner is not liable for debts contracted before he joined the firm, but if he pay any of the old debts or interest upon them, or do other special acts, he may render himself liable in equity. On the retirement of an ostensible partner, notice of his retirement must be given, or he will be liable to the creditors of the continuing firm for subsequent contracts made by them, and such notice is usually given in the 'Gazette;' but notice in the 'Gazette' will not bind creditors who are not shown to have seen the notice. Third persons have a claim against a dormant partner for contracts entered into by the firm while he was a partner. This claim is founded on such dormant partner being actually a partner; and therefore it is unnecessary, on the dissolution of a partnership between an ostensible and a dormant partner, to give notice of the dissolution to the creditors, in order to protect the latter from subsequent contracts: for when the dormant partner has ceased to be a partner, he is relieved from all future liability.

It is collected from the majority of cases that a partnership contract is joint (not joint and several) both at law and in equity. Upon the death of a partner, therefore, the legal remedy against him in respect to the joint contract is extinguished, and the creditor can maintain an action against the surviving partners only. But the rule of equity as applicable to partners with respect to third parties was considered to be that the joint debts should be satisfied out of the joint estate; if that were insufficient, then subject to the claims of their separate creditors out of their separate estates proportionally; and if any

of them were insolvent, then out of the remaining separate estates proportionally. But the case of *Devaynes v. Noble* (1 Mer., 529), affirmed on appeal by Lord Brougham (2 R. & M. 495), has established the principle that a partnership contract is several as well as joint; and that a partnership creditor may have recourse for full payment to the estate of a deceased partner. And the same judge (Sir W. Grant) who decided that case, declared that a partnership debt has been treated in equity as the several debt of each partner, though at law it is only the joint debt of all. By this decision it appears that a joint creditor on the death of one partner obtains a more advantageous remedy against his estate than he would have had against his separate estate if living. But it seems doubtful whether this point can be considered as finally settled.

Notice of the decease of a partner to the creditors of the firm is not necessary to free his estate from future liability; but it is otherwise if one of the surviving partners be executor of the deceased. A deceased partner sometimes directs his executors to continue the trade; in that case his estate will be liable to the extent to which he directs his assets to be employed. If the executor exceed that limit, he becomes personally responsible.

In actions by partners, all the partners may, and all ostensible partners must, join as plaintiffs, unless the contract upon which the action is brought be in writing under seal, when only those partners who are included can sue thereon. But if a contract not under seal be made by some, for the benefit of themselves and others, those for whose benefit it is made, as well as those whose names appear on the contract, may sue. Persons who may legally be partners in foreign countries, as husband and wife, cannot sue here as partners, for by the law of England husband and wife are not permitted to sue as partners. On the other hand, partners trading abroad in such a manner as to make a partnership here, may sue as partners for consignments sent to this country, though they cannot sue as partners at the place of trading by reason of the particular law of that place. The construction of contracts is governed by

the laws of the country in which they are made; but remedies must be pursued by the means pointed out by the law of the country whose tribunals are appealed to. The laws of the country where the contract was made can only have a reference to the nature of the contract, not to the mode of enforcing it. If partners have occasion to prefer an indictment relating to the partnership property, such property may be stated in the indictment as belonging to one of them by name, and to another or others, as the case may be. But though it is not necessary to name all the partners, yet where there are other partners, that fact should appear in the indictment, or the prisoner must be acquitted.

A whole firm may become bankrupt, or some or one only of the partners may become so, whilst the remaining members may be solvent; but those only of the partners who have committed acts of bankruptcy are to be deemed bankrupts; and to constitute two or more bankrupts under a single fiat there must be evidence of joint trading. Upon the bankruptcy, the whole of the bankrupt's property vests absolutely in the assignees, who have the same remedy by action for the recovery of the debts due to the bankrupt, and for the redress of all civil injuries with respect to the property passing to them under the fiat, as the bankrupt would have had if no fiat had issued. Accordingly, when the bankruptcy is separate, the solvent partners join with the assignees in an action for the recovery of the joint debts. On the bankruptcy of one partner the solvent partners become tenants in common with the assignees of all the partnership effects. Upon the bankruptcy of one partner, under a separate fiat issued against him, the assignees take all his separate property and all his interest in the joint property; and if a joint fiat issue against him, the assignees take all the joint property, and all the separate property of each individual partner. Joint estate is that in which the partners are jointly interested for the purposes of the partnership at the time of the bankruptcy. Separate estate is that in which the partners are each separately interested at

that time. Joint debts are those for which an action, if brought, must be brought against all the partners constituting the firm; in all cases therefore when a partner becomes liable for a debt contracted by his copartners, a joint debt is created, and the creditor is a joint creditor of the firm. Separate debts are those for which the creditor can have his remedy at law against that partner only who contracted them. (*Collyer, On Partnership.*)

On partnerships in banks and joint stock companies, see **BANK** and **JOINT STOCK COMPANY**. As to mines, a partnership for working a mine is considered by courts of equity in England like any other trade partnership. The mode in which property in ships is held by part owners is explained in **SHIPS**.

The fundamental rules of English partnership are the same as those of the Roman contract of partnership, the chief rules of which are contained in *Gaius* iii. 148-154; *Dig.* 17, tit. 2. The great extension of English industry and commerce has been accompanied by the growth of a large mass of law applicable to the contract of partnership, a great part of which has been made by the decisions of the courts on such cases as have been litigated. Accordingly the rules about partnership now form the subject of bulky treatises, the safest clue to the use of which is a clear conception of the fundamental notions of a contract of partnership.

**PARTY WALLS.** [**BUILDING, ACTS FOR REGULATING.**]

**PASSENGERS' ACT.** [**EMIGRATION, p. 831.**]

**PASSPORT**, a printed permission signed by the secretary of state of the home department of a country, which allows a subject of that country to leave it and go abroad. When he has obtained this, the bearer must have his passport signed by the minister or agent of the state to which he intends to proceed. A foreigner who wishes to proceed to a country where he has been residing, generally obtains his passport from the minister or agent or consul of his own state. Such a document states the name, surname, age, and profession of the bearer,

describes his person, and serves as a voucher of his character and nation, and entitles him to the protection of the authorities of other countries through which he may pass, and which are at peace with his own. On arriving at the outposts or frontier towns of a foreign state, every traveller is obliged to show his passport, which is examined by the proper authorities before he is allowed to proceed on his journey. This ceremony is sometimes repeated at every garrison town which he passes on the road. Even the natives of most European states cannot travel twenty miles through their own country without being furnished with a passport.

The system of passports is old, but it has become much more rigid and vexatious during the last half-century. Passports are not required in the British Islands and the United States of North America; and the natives of those two countries, accustomed to the freedom of unobstructed movement, find the regulations as to passports when they travel on the continent of Europe to be rather irksome. The practice has been defended on the plea that it prevents improper and dangerous persons from introducing or concealing themselves; but numerous instances have proved that persons, however obnoxious, who have money and friends, can evade such restrictions. That every state may admit or refuse admittance to foreigners as it thinks fit, cannot be questioned; and in times of war especially, some sort of restriction may be required for the safety of the country; but the present vexatious system of passports, as enforced in many European states in time of profound peace, is useless and mischievous. It is a check upon travellers, to whom it causes much trouble and loss of time, while the advantages supposed to result from it are at least very dubious.

It is not easy to enforce the regulations respecting passports where railroads have become almost the only mode of travelling; and in Belgium an alteration has recently been made in the passport system in consequence of the difficulty of rigidly adhering to the old regulations.

**PASTURE.** [COMM. N, RIGHTS OF; INCLOSURE.]

**PATENT.** This term is applied to certain privileges which are granted by the Crown by letters patent. [LETTERS PATENT.] The object of such privileges is to encourage useful inventions. Before applying for a patent for an invention, two considerations are necessary: first, what is entitled to a patent; and next, whether the invention has the requisite conditions.

In the first place, the machine, operation, or substance produced, for which a patent is solicited, must be new to public use, either the original invention of the patentee, or imported by him and first made public here. A patent may be obtained for England, Ireland, or Scotland, although the subject of it may have been publicly known and in use in either or in both of the other two countries.

In the second place, the subject of the invention must be useful to the public, something applicable to the production of a vendible article, for this is the construction put upon the words "new manufacture" in the statute of James I. The discovery of a philosophical principle is not entitled to such protection: such principle must be applied, and the manner of such application is a fit subject for a patent.

Inventions entitled to patent may be briefly enumerated as follows:—

1. "A new combination of mechanical parts, whereby a new machine is produced, although each of the parts separately be old and well known.
2. "An improvement on any machine, whereby such machine is rendered capable of performing better or more beneficially.
3. "When the vendible substance is the thing produced either by chemical or other processes, such as medicines or fabrics.
4. "Where an old substance is improved by some new working the means of producing the improvement is in most cases patentable."

If the inventor think that the machine, operation, or substance produced comes under any of these enumerations, and that it is new, and likely to be useful to



the public, he may enter a caveat at the Patent Office, and at the offices of the attorney-general and the solicitor-general, in the following form:—

“Caveat against granting letters patent to any person or persons for (here describe the invention in the most general terms), without giving notice to A. B., of \_\_\_\_\_, in the county of \_\_\_\_\_.”

(Date.)

These caveats stand good for twelve months, and may be renewed from year to year: the fee for entering such caveat is 5s. at each office.

As soon as the caveat is entered, the inventor may find it necessary to obtain the assistance of workmen or others, in order to carry his invention into effect; and if in doing this he should make known to them his invention, he will not thereby lose his right to a patent. Any communication which is necessary for carrying his ideas into effect is not considered such a publication as would of course vitiate his right. But though the inventor is thus protected in his experiments, and is safe while dealing with honest people, he is not protected against fraud. If a person in the secret should make such invention public, or cause it to be used by several persons between the time of entering the caveat and the next stage of proceeding, that of sending in the petition, no patent could be obtained, as the declaration that accompanies the petition could not be made, or, if made, would be untrue. Again, if such workman, instead of making it public, were to give to some other person the necessary information, the latter might apply for a patent for such invention as his own; and if he could succeed in concealing the source of his information by a false declaration, he might force the real inventor to allow him to participate in such patent, or to forego it altogether. The caveat can do no more than prevent any one from stealing the ideas of an inventor and appropriating them to his own use, to the exclusion of the inventor; and it will also ensure notice of any application for a patent for a similar invention, and in some cases prevent the expenditure of time and money upon a subject for which no patent could be

obtained. If any one apply for a patent, the title of which is similar to that contained in the caveat, the attorney or solicitor general will send a notice of such application to the enterer of the caveat, who, if he should think such application likely to interfere with his invention, must, within seven days from the receipt of the notice, state in answer his intention of opposing such patent.

The attorney or solicitor general then summons the applicants to appear separately before him; and if he should be of opinion that the two patents will interfere with each other, or are virtually the same, the usual course is not to grant any patent except to the two claimants conjointly, though if priority of invention can be proved by either, he who is prior is entitled to the patent.

If the invention is of such a nature that it can at once be produced or put into operation, no caveat is needed; and indeed a caveat may be the means of exciting the very attention and opposition which it is intended to prevent. Where some experiments or operations which require assistance must be performed before a definite title can be given to the invention, as must be done in the declaration and petition, it is much better to avoid the caveat; and by getting the different parts of the machinery or operations performed by different persons, if possible, keep the invention a secret until the patent is secured.

The next step is to draw up a petition to the crown, before doing which however the title of the patent must be settled. To those who have not considered the subject this may not seem a very difficult matter, but in fact it requires the greatest care; for the least discrepancy between the title and the description contained in the specification will endanger the patent. (See the evidence of Mr. Farey and others before a committee of the House of Commons upon this subject, 1829.)

The title should set forth the subject of the patent in such terms that any one may see if a patent has been taken out or applied for in the case of any similar invention.

The titles of patents collectively should form an index of the inventions thus pro-

tested. It is a common practice however to make the title as obscure as it can be made without endangering the patent, in order that the real object of it may be kept secret. But this is a matter of great difficulty, and has often justly vitiated a patent. The law requires all patented inventions to be open to public inspection, and the enterer of a caveat may be cheated by a title, for although the subjects may be the same, a title may express the invention so faintly, or indeed so falsely, that the similarity of two inventions may escape the notice of the attorney-general, and injustice may be done by granting a patent to one party while priority of invention belongs to another. By the 5 & 6 Wm. IV. c. 83, a patentee is allowed to enter a disclaimer of any part of the title or specification, with the consent of the attorney-general or solicitor-general, who may order such disclaimant to publish his disclaimer. This act supplies a remedy for unintentional errors, but is ineffectual where the title is purposely made obscure. Besides this, the disclaimer does not operate retrospectively, so that if an action be commenced before the entry of the disclaimer, the title and specification must be adduced on the trial as they originally stood. A caveat may be entered against the granting of such disclaimer.

The following cases contain instances of patents being lost through defective titles:—*King v. Metcalfe* (2 Starkie, N. P. C., 249); *Cochrane v. Smethurst* (K. B., 1 Starkie, 205). In the case of *Bloxam v. Elsee* (6 Barn. and Cress., 169 and 178), the title of a patent which came in question was “A Machine for making Paper in Single Sheets, without seam or joining, from 1 to 12 feet and upwards in width, and from 1 to 45 feet and upwards in length.” The specification however described a machine only capable of producing paper of one width or to a certain width. Now if an inventor who thought of taking a patent for a machine to make paper of a greater width than 12 feet had looked at the title only of this patent, he would have supposed that such a patent already existed; but if he had inspected the specification, he would have found that it did not bear

out the title, as the machine therein described was not capable of making paper of a width greater than 12 feet. The patent then was invalid, as the title comprised more than the specification. This is the most common error that patentees fall into. Jessop's case, cited during the trial of Boulton and Watt against Bull, in 1795, by Mr. Justice Buller, is another instance. A patent was taken out for a “New Watch,” whereas the specification only described a particular movement in a watch, which was the real invention, and the patent was therefore void.

An honest and valid title may be stated, in a few words, to be, a description of the precise object of the invention in the most simple language.

The title being settled, the petition must be drawn in the following form:—

“The humble petition of A. B., of

, in the county of

“Sheweth,

“That your petitioner hath invented (here insert the title which you intend the patent to bear), that he is the first and true inventor thereof, and that it has not been practised by any other person or persons whomsoever, to his knowledge and belief.

“Your petitioner therefore most humbly prays that your Majesty will be graciously pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent under the great seal of Great Britain for the sole use, benefit, and advantage of his said invention within England and Wales and the town of Berwick-upon-Tweed, and also in all your Majesty's colonies and plantations abroad, for the term of 14 years, pursuant to the statute in that case made and provided.”

The passage in Italics must be omitted if the inventor does not intend to obtain a patent for the colonies. This petition, with a declaration annexed, must be left at the office of her Majesty's secretary of state for the home department. The declaration is in lieu of the affidavit which was required until the passing of the Act 5 & 6 Wm. IV. c. 62.

A few days after the delivery of the petition, the answer may be received; which contains a reference to the attorney

or solicitor general to report if the invention is deserving of letters-patent. If such report be favourable, it must be taken and left at the Home-office for the queen's warrant, which is addressed to the attorney or solicitor general, and directs the bill to be prepared. The bill is in effect the draft of the patent, and contains the grant with reference to the clauses and provisos in the letters patent. It is signed by the secretary of state for the home department, and by the attorney or solicitor general. If at this stage of the proceeding any person should wish to oppose the patent, a caveat may be entered in the manner already described, but the enterer is required to deposit 30*l.* at the office of the attorney or solicitor general to cover the patentee's expenses if he should succeed in establishing his right to patent. The bill, when prepared, must be left at the office of the secretary of state for the home department for the queen's sign manual. It must then be passed at the signet-office, where letters of warrant to the lord keeper of the privy seal will be made out by one of the clerks of the signet; and lastly, the clerk of the privy seal will make out other letters of warrant to the lord chancellor, in whose office the patent will be prepared, sealed with the great seal, and delivered to the patentee. Considering the number of offices through which a patent passes, it might be supposed that the inquiry into the validity of the claim is very rigid, and that, when once the patent is sealed, it is safe from opposition. But in reality the law officers through whose offices it is carried exercise no opinion upon the validity of the patentee's claim; the whole responsibility rests upon himself, as will be seen by perusing the following abstract of the form of letters patent:—

The first part of the patent recites the petition and declaration, and sets forth the title which has been given to the invention by the inventor.

The 2nd relates to the granting the sole use of the invention to the inventor for the space of fourteen years, whereby all other persons are restrained from using the invention without a licence in writing first had and obtained from the patentee, and persons are restricted from counter-

feiting or imitating the invention, or making any addition thereto or subtraction therefrom, with intent to make themselves appear the inventors thereof. This clause also directs all justices of the peace and other officers not to interfere with the inventor in the performance of his invention.

The 3rd part declares that the patent shall be void, if contrary to law or prejudicial and inconvenient to the public in general, or not the invention of the patentee, or not first introduced by him into this country.

The 4th declares that letters patent shall not give privilege to the patentee to use an invention for which patent has been obtained by another.

The 5th relates to the manner in which letters patent become void, if divided into more than a certain number of shares. The number of such shares used to be five, but all patents sealed since May, 1832, allow the interest to be divided between twelve persons or their representatives. This part also relates to the granting of licences.

The 6th contains a proviso that a full and accurate description or specification shall be enrolled by the patentee in a specified time.

The 7th directs the patent to be construed in the most favourable manner for the inventor, and provides against inadvetency on the part of the clerk of the crown in enrolling the privy seal bill.

Letters patent then only grant the sole use of an invention for a certain time, provided that the statement in the declaration be true, that the title give a distinct idea of the invention, and that the specification be enrolled within a certain time mentioned in the patent, generally two months for England, four for England and Scotland, and six for the three countries together. This time depends on the attorney or solicitor general, a longer or shorter period being granted according to the extent or difficulty of the invention; in some instances two years have been allowed for specifying.

The object of the specification is twofold:—

First, it must show exactly in what the invention consists for which a patent has

been granted, and it must give a detailed account of the manner of effecting the object set forth in the title. It must describe exactly what is new and what is old, and must claim exclusive right to the former: the introduction of any part that is old, or the omission of any part that is new, equally vitiates the patent.

In the second place, a patent is granted for a certain number of years on the condition that such full and accurate information shall be given in the specification as will enable any workman or other qualified person to make or produce the object of the patent at the expiration of that term without any further instructions. A specification is bad if it does not describe the means of doing all that the title sets forth: it is equally bad if it describes the means of effecting some object not stated in the title: it is incomplete if it mentions the use of one substance or process only, and it can be proved that the inventor made use of another, or that another known substance or process will answer the purpose as well; and it is false if more than one substance or process is described as producing a certain effect, and it is found that any one of them is unfit to the purpose. Patentees frequently render their patents invalid by claiming too much; thus, after describing one substance or process which will answer a certain purpose, they often conclude by some such expression as "or any other fit and proper means." The following is an instance in which a patent was set aside by such an expression. In specifying a machine for drying paper by passing it against heated rollers by means of an endless fabric, the inventor, after describing one sort of fabric, the only one in fact which he used, went on to say that any other fit and proper material might be used. Now if he used any other means of effecting his object, such means should have been distinctly described. This alone rendered his specification incomplete; but, besides this, it was proved that no other fabric would answer the purpose, or rather, that no other was known, and the patent was annulled accordingly. The cases which have been already mentioned as instances of bad titles will, by supposing the title to be good, be con-

verted into instances of bad specifications, as the invalidity arises from the title and specification not agreeing with each other.

The patentee may describe his invention just as he pleases, and he may illustrate such description by drawings or not; but he should be careful to use words in their most common acceptation, or if some technical use should have perverted their meaning, he should make it appear distinctly that he intends them to be taken in such perverted sense. Subjoined is the form of the other part of the specification:—

"To all to whom these presents shall come greeting, I the said (patentee's name and residence) send greeting. Whereas her most excellent Majesty Queen Victoria, by her letters patent under the great seal of Great Britain, bearing date at Westminster, the       day of       , in the       year of her reign, did give and grant unto me, the said A. B., my executors, administrators, and assigns, her special licence, full power, sole privilege, and authority, that I the said A. B., my executors, administrators, and assigns, and such others as I the said A. B., my executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times hereafter during the term of years therein mentioned, should and lawfully might make, use, exercise, and vend within England, Wales, and the town of Berwick upon Tweed, and also in all her said Majesty's colonies and plantations abroad (if such be the case), my invention of (here insert the title set forth in the letters patent verbatim); in such letters patent there is contained a proviso that I the said A. B. shall cause a particular description of the nature of my said invention, and in what manner the same is to be performed, by an instrument in writing under my hand and seal, to be enrolled in her said Majesty's High Court of Chancery within       calendar months next, immediately after the date of the said in part recited letters patent, reference being thereunto had may more fully and at large appear. Now know ye, that in compliance with the said proviso, I the said A. B. do hereby declare the nature of my invention and the manner in which

the same is to be performed are particularly described and ascertained in and by the following description thereof, reference being had to the drawings hereunto annexed, and the figures and letters marked thereon, that is to say, my invention consists (here insert the description of the invention). In witness whereof I the said A. B. have hereunto set my hand and seal this            day of            , 1846.  
(Name and seal.)

"Taken and acknowledged  
by A. B. party hereto  
the day of            , 1846,  
at            ,

"Before me,

"B—— C——

"A master (or master extraordinary) in Chancery."

The specification being completed, it only remains to enrol it before 12 o'clock on the day of the expiration of the time allowed in the letters patent. All specifications are open to public inspection upon payment of a small fee, and books are kept at the Patent Office, Serle Street, Lincoln's Inn, which contain a list of all patents in force. These books may be inspected, by permission of the clerk, without any charge.

#### *Extension of Term of Letters Patent.—*

If a patentee finds that the time allowed him by the patent is not sufficient to remunerate him for the trouble and expense of his invention and patent, he may apply for an extension of the term. This used to require a petition to parliament, but by the 5 & 6 Wm. IV. c. 83, the patentee, after advertising his intention to apply for an extension of his patent in the manner required by the act, may petition the king in council. Any person wishing to oppose the extension must enter a caveat at the Privy Council Office, and the petitioner and enterer of the caveat or caveats are heard by their counsel before the Judicial Committee, which reports to the king; and the king is authorised, if he shall think fit, to grant new letters patent for the same invention for a term not exceeding seven years after the expiration of the first term. The application must be made so as to allow time for the grant before the conclusion of the original term, according to 5 & 6

Wm. IV. c. 83; but this condition is somewhat modified by 2 & 3 Vict. c. 67. By the 7 & 8 Vict. c. 69, § 2, a patentee may obtain an extension of the term for any time not exceeding fourteen years, "subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said act of the sixth year of the reign of his late majesty" (5 & 6 Wm. IV. c. 83). This act contains also other enactments applicable to the extension of time where patentees have wholly or in part assigned their right.

Scotch and Irish patents are obtained by process similar to that described for England; the applications however are made to the respective law officers of each country.

The complicated nature of the proceedings in obtaining a patent has led to the establishment of a class of persons who make it their business to obtain patents for inventors; and in case of an intricate invention, it is far better for an inventor to employ one of these "patent agents" than to run the risk of the errors and loss of time which may be occasioned by his inexperience. The fee charged by the clerks of the Patent Office, who act also as agents, is ten guineas, exclusive of the drawings and descriptions, which of course vary according to the difficulties of the subject; a small sum comparatively, when the loss of time and risk of a faulty title or specification are taken into consideration.

The time necessary for obtaining a patent is seldom less than two months, and frequently much longer. This is justly considered a great grievance, as the inventor is not secure until the great seal is attached, and no reason can be assigned for this delay, except that the patent passes unnecessarily through a great number of offices. The expense also is very heavy, and may be stated on an average at 120*l.* for England, with 5*l.* additional for the colonies, 100*l.* for Scotland, and 125*l.* for Ireland.

It is evident that there are many inventions which will not bear this outlay of capital, and the consequence is that the number of patents is much smaller than it would be if the charges were less; and

the public lose by this. The inventor, if he procure a patent, will take care that although he may be the party inconvenienced at first by the outlay, the public shall pay for it eventually; but if he do not take out a patent, he will do all in his power to keep his invention secret for a longer time than the patent would have allowed. This circumstance has given rise to much of that jealousy which is so apparent among manufacturers; it has materially retarded the study of the arts, which are now fenced round with secrets and difficulties, and has been mainly instrumental in causing the great want which confessedly exists, of men conversant at once with the theory and the practice of mechanical operations.

The truth of these observations will be admitted by all who have been in any way connected with manufactures; but if any evidence be wanting to convince those who are not, the small number of patents taken out in England is quite conclusive. In 1837 the number of English patents was 254, and that of Scotch 132; the numbers in France and Prussia were much larger. Much has been said against the present law of patent, which in our opinion is unfounded in truth. There are difficulties connected with the title and specification which cannot perhaps be smoothed by any legislative enactments; but the obstacles which the law has placed in the way of inventors can be easily removed. There is nothing to prevent patents being granted in a quarter of the present time, and at a tenth part of the present expense. When this is done, the number of patents will rapidly increase; talent, which is inert for want of motive, will be called into action, and the workshop will no longer be closed against the philosophic inquirer.

PATENT LETTERS. [LETTERS PATENT.]

PATERNITY. [BASTARD.]

PATRIARCH. [BISHOP, p. 377.]

PATRICIANS AND PLEBEIANS. [NOBILITY; AGRARIAN LAWS.]

PATTERNS. [COPYRIGHT, p. 645.]

PATRON. [ADVOUSON; BENEFICE; PARISH; CLIENT.]

PAUPERISM. [POOR LAWS AND PAUPERISM; SETTLEMENT.]

PAWN. [PLEDGE.]

PAWNBROKERS. All persons who receive goods by way of pawn or pledge for the repayment of money lent thereon at a higher rate of interest than five per cent. per annum, are pawnbrokers. In pawning, the goods of the borrower are delivered to the lender as a security. [PLEDGE.]

The business of lending money on pledges is in many countries carried on under the immediate control of the government as a branch of the public administration; and where only private individuals engage in it, as in this country, it is placed under regulations. Thus in China, where pawnbrokers are very numerous, Mr. Davis says ('Chinese,' vol. ii. p. 438) they are under strict regulations.

The 12 Anne, stat. 2, c. 16, fixed the legal rate of interest at 5 per cent. per annum; but the interest which pawnbrokers are allowed to charge is regulated by a special statute, the 39 & 40 Geo. III. c. 99, passed 28th of July, 1800. This act fixes the rates of interest allowed on goods or chattels placed in the hands of pawnbrokers according to the following scale:—

For every pledge upon which there shall have been lent any sum not exceeding 2s. 6d., the sum of  $\frac{1}{2}d.$ , for any time during which the said pledge shall remain in pawn not exceeding one calendar month, and the same for every calendar month afterwards, including the current month in which such pledge shall be redeemed, although such month shall not be expired. If there shall have been lent the sum of 5s., one penny; 7s. 6d., one penny halfpenny; 10s., two-pence; 12s. 6d., two-pence halfpenny; 15s., three-pence; 17s. 6d., three-pence halfpenny; 20s., four-pence; and so on progressively and in proportion for any sum not exceeding 40s.; but if exceeding 40s. and not exceeding 42s., eight-pence; if exceeding 42s. and not exceeding 10*l.*, after the rate of three-pence for every 20s., by the calendar month, including the current month, and so on in proportion for any fractional sum. Persons may redeem goods within seven days after the expiration of the first calendar month with-

out paying interest for the extra seven days; or within fourteen days on paying for one month and a half; after which time interest is charged for two calendar months.

Pawnbrokers are required by the act to keep books in which all goods taken in pledge must be entered and described, the sum advanced upon them, and the name and abode of the pledger, and whether he is a housekeeper or a lodger. They make out at the time two memoranda of these particulars, one of which is given to the pledger. This duplicate is given gratis in all cases where the sum advanced is under 5s.; when it is 5s. and under 10s., one halfpenny is charged; 10s. and under 20s., one penny; 1l. and under 5l., two-pence; 5l. and upwards, four-pence. Articles pledged for sums above 5s. must be entered in the pawnbroker's books within four hours; and those on which 10s. or upwards have been advanced must be entered in a separate book and numbered, the first entry in each month commencing No. 1. The number and description of the pledge in the books and on the duplicate correspond with each other. Articles cannot be taken out of pawn without the production of the duplicate, the holder of which is assumed to be the owner; and accordingly duplicates are often sold by the pledger when he wants money, and they are transferred from one to another like any other saleable article. If a duplicate should be lost or stolen, the pawnbroker is required to give a copy of it to the person who represents himself as the owner of the articles pledged, with a blank form of affidavit, which must be filled up with a statement of the circumstances under which the original duplicate was lost, to the truth of which deposition an oath must be made before a magistrate. For this second duplicate the pawnbroker is entitled to demand one halfpenny, if the sum advanced does not exceed 5s.; from 5s. to 10s., one penny; and afterwards in the same proportion as for the original duplicate.

The penalty against unlawfully pawning goods the property of others is between 20s. and 5l., besides the full value of the goods pledged; and in default of

payment, the offending party may be committed for three months' imprisonment and hard labour. Persons forging or counterfeiting duplicates, or not being able to give a good account of themselves on offering to pawn goods, are liable to imprisonment for any period not exceeding three months. Pawnbrokers or other persons buying or taking in pledge unfinished goods, linen, or apparel intrusted to others to wash or mend, are to forfeit double the sum advanced and to restore the goods. The act empowers police officers to search pawnbrokers' houses or warehouses when suspected to contain unfinished goods unlawfully pledged, and goods unlawfully pawned must be restored to the owner by the pawnbroker.

All pawned goods are deemed forfeited at the end of one year. If redeemed, the pawnbroker must endorse on his duplicate the charge for interest, and keep it in his possession for one year. Articles on which sums have been advanced of 10s. and not exceeding 10l., if not redeemed, must be sold by auction, after being exposed to public view and at least two days' notice having been given of the sale. The catalogue of sale must contain the name and abode of the pawnbroker, the month in which the goods were received, and their number as entered in the books and on the duplicate. Pictures, prints, books, bronzes, statues, busts, carvings in ivory and marble, cameos, intaglios, musical, mathematical, and philosophical instruments, and china, must be sold separate from other goods, on the first Monday in January, April, July, and October in every year. On notice not to sell given in writing, or in the presence of one witness, from persons having goods in pledge, three months further are allowed beyond the year for redemption. An account of sales of pledges above 10s. must be entered in a book kept by the pawnbroker, and if articles are sold for more than the sum for which they were pledged, with interest thereon, the owner is entitled to the overplus, if demanded within three years after the sale. Pawnbrokers' sale-books are open to inspection on payment of a fee of one penny. The penalty on pawnbrokers selling goods before the proper time, or injuring or losing them,

and not making compensation to the owner, according to the award of a magistrate, is 10*l*. They are required to produce their books on the order of a magistrate in any dispute concerning pledges, and are not to purchase goods which are in their custody. The act extends to the executors of pawnbrokers.

The Pawnbrokers' Act prohibits pledges being taken from persons intoxicated or under twelve years of age; and by the Metropolitan Police Act (2 & 3 Vict. c. 47), a fine of 5*l*. is inflicted upon pawnbrokers taking pledges from persons under the age of sixteen. Pawnbrokers are prohibited from buying goods between the hours of 8 A.M. and 7 P.M.; or receiving pledges from Michaelmas-day to Lady-day before 8 A.M. or after 7 P.M.; or for the other part of the year, before 7 A.M. or after 8 P.M., excepting on Saturdays and the evenings preceding Good Friday and Christmas-day, when the hour for closing is extended to 11 P.M. They are required to place a table of profits and charges in a conspicuous part of their places of business.

Pawnbrokers are required to take out an annual licence from the Stamp Office; and, to enable them to take in pledge articles of gold and silver, a second licence is necessary, which costs 5*l*. 15*s*. Those who carry on business within the limits of the old twopenny-post pay 15*l*. a year for their licence, and in other parts of Great Britain 7*l*. 10*s*. The licence expires on the 31st of July, and a penalty of 5*l*. is incurred if it is not renewed ten days before. No licence is required in Ireland, but those who carry on the business of a pawnbroker must be registered.

In 1833 the number of pawnbrokers in the metropolitan district was 368; 386 in 1838; and 383 in 1842; in the rest of England and Wales the number was 1083 in 1833; 1194 in 1838; and 1304 in 1842; in Scotland the number was 52 in 1833; 88 in 1838; and 133 in 1842; making a total of 1820 establishments in 1842, which paid 16,522*l*. for their licences, besides the licence which many of them take out as dealers in gold and silver. The increase in England is to a considerable extent chiefly in places

where the business of a pawnbroker has not hitherto been carried on; and in Scotland, according to the 'New Statistical Account,' the extent of this change is remarkable. The business of a pawnbroker was not known in Glasgow until August, 1806, when an itinerant English pawnbroker commenced business in a single room, but decamped at the end of six months; and his place was not supplied until June, 1813, when the first regular office was established in the west of Scotland for receiving goods in pawn. Other individuals soon entered into the business; and the practice of pawning became so common that, in 1820, in a season of distress, 2043 heads of families pawned 7380 articles, on which they raised 739*l*. 5*s*. 6*d*. The capital invested in this business in 1840 was about 26,000*l*. Nine-tenths of the articles pledged are redeemed within the legal period. (Dr. Cleland's 'Former and Present State of Glasgow,' 1840.) There are no means of ascertaining the exact number of pawnbrokers' establishments in the large towns of England. A return of the amount and nature of the dealings of pawnbrokers would supply much valuable evidence of the condition and habits of the people. The only return of the kind which we have seen was supplied by a large pawnbroking establishment at Glasgow to Dr. Cleland, who read it at the meeting of the British Association for the Advancement of Science in 1836. The list comprised the following articles:—539 men's coats, 355 vests, 288 pairs of trowsers, 84 pairs of stockings, 1980 women's gowns, 540 petticoats, 132 wrappers, 123 duffles, 90 pelisses, 240 silk handkerchiefs, 294 shirts and shifts, 60 hats, 84 bed-ticks, 108 pillows, 262 pairs of blankets, 300 pairs of sheets, 162 bed-covers, 36 table-cloths, 48 umbrellas, 102 Bibles, 204 watches, 216 rings, and 48 Waterloo medals. It was not stated during what period these articles were received. There were at that time in Glasgow above thirty pawnbrokers. In the manufacturing districts during the prevalence of "strikes," or in seasons of commercial embarrassment, many hundreds of families pawn the greater part of their wearing-apparel and household furniture. (Paper read



in 1837 by Mr. Ashworth, of Bolton, 'On the Preston Strike in 1836.') The borough-reeve of Manchester stated on a late occasion (April, 1840) that a clergyman had shown him sixty-seven pawn-tickets from one family, and he said there were thousands in similar circumstances "going inch by inch," in consequence of the stagnation of industry. The practice of having recourse to the pawnbrokers on such occasions is quite a different thing from the habits of those who, "on being paid their wages on the Saturday, are in the habit of taking their holiday clothes out of the hands of the pawnbroker to enable them to appear respectably on the Sabbath, and on the Monday following they are again pawned, and a fresh loan obtained to meet the exigencies of their families for the remainder of the week." It is on these transactions and on such as arise out of the desire of obtaining some momentary gratification that the pawnbrokers make their large profits. It is stated in one of the Reports on the Poor-Laws, that a loan of

3*d.*, if redeemed the same day, pays annual interest at the rate of 5200 per cent.; weekly, 866 per cent.

4 <i>d.</i> 3900 per cent;	weekly, 650 per cent.
6 <i>d.</i> 2600       "	"       433       "
9 <i>d.</i> 1733       "	"       288       "
12 <i>d.</i> 1300       "	"       216       "

In a petition presented to parliament in 1839, it is stated, that on a capital of 6*d.* thus employed (in weekly loans) pawnbrokers make in twelve months 3*d.* 2*d.*; on 5*s.* they gain 10*s.* 4*d.*; on 10*s.* they clear 22*s.* 3¼*d.*; and on 20*s.* lent in weekly loans of sixpence, they more than double their capital in twenty-seven weeks; and should the goods pawned remain in their hands for the term of twelve months (which seldom occurs), they then derive from 20 to 100 per cent. The 'Loan Fund Societies,' which are protected by an Act of the Legislature, and advance small sums under 15*l.* at 5 per cent., are of no advantage to the habitual dependants upon the pawnbroker.

The 'Pawnbrokers' Gazette' is a stamped weekly publication, which contains advertisements of sales, and other

information of use to the trade, amongst whom it exclusively circulates.

The act for the regulation of pawnbrokers in Ireland is the 28 George III. c. 43 (Irish statute). It requires pawnbrokers to take out licences and to give securities; appoints the marshal of the city of Dublin corporation registrar of licences; directs returns to be made to him monthly, upon oath, of sums lent; and allows the registrar a fee of one shilling on each return. The stamp duty on licences amounted to 2775*l.* in 1842.

In 1837 Mr. Barrington founded the Limerick Mont de Piété, as a means of providing funds for the public charities of that city. He erected buildings at his own expense, and sent competent persons to Paris to make themselves acquainted with the mode of conducting the Mont de Piété in that capital. A capital of 4000*l.* was raised on debentures, bearing interest at 6 per cent.; and the establishment was opened on the 13th of March, 1837, under the control of a committee. In the course of eight months 13,000*l.* had been lent on 70,000 pledges at a rate of interest amounting to one farthing per month for a shilling, no charge being made for duplicates. Six-sevenths of the amount advanced was in sums under 5*s.* Four months after the establishment was opened, the value of articles redeemed on Saturdays averaged about 140*l.*, the interest on which amounted to 3*l.* 3*s.* 6*d.*, while the pawnbroker's charge would have been 9*l.* Towards the close of the year 1839 Mr. Barrington published a short pamphlet showing the further progress of the institution. The capital had been increased to 15,350*l.*, and a clear profit of 1736*l.* had been realised since March, 1837. Small sums are lent to poor persons of known respectability of character on their personal security. This plan is attended with valuable effects upon the conduct and character of the poorer classes.

In Appendix E, 'Poor Inquiry (Ireland),' there is an account of the Ahascragh Loan Society, which shows that where individuals can be found to superintend the details, the ruinous plan of applying to pawnbrokers may be partially

obviated. This Society had borrowed 720*l.*, partly from the county Galway trustees, which sum had been disposed among 400 borrowers, and no loss had occurred during the two years in which the Society had been in operation, chiefly in consequence of the attention of the Rev. H. Hunt, the treasurer. In the evidence taken at an examination by the Commissioners of Inquiry in the county Leitrim (p. 93) it was stated that there were no pawnbrokers in the barony; but a class of men called usurers are to be met with in every direction, "and they bind both borrowers and sureties by solemn oaths to punctual repayment of the principal, and of the interest, which is exorbitant in proportion to the smallness of the sum lent." The witness, who was a magistrate, further stated, that a case had recently come before Lord Clements and himself, in which a man had bound himself to pay 12*s.* a year in quarterly instalments for the use of 15*s.* principal. Such facts show the expediency of affording every encouragement to establishments conducted under the immediate control of the law. In some instances in Ireland pawnbrokers keep spirit-shops under the same roof or in an adjoining house. The Report just quoted states that people were beginning to lose their reluctance to wear the forfeited property of their neighbours; and most of the poor persons examined stated that a few years ago they were ashamed to go to the pawnbrokers, but this feeling appeared then to have been much weakened. The scarcity of capital in Ireland occasions many individuals to have recourse to pawnbrokers for purposes unknown in England, such as obtaining the means of purchasing a pig or buying seed.

The Mont de Piété is an institution of Italian origin. [MONT DE PIÉTÉ.] In 1661 a project existed for establishing Monts de Piété in England. It is extremely doubtful whether a public institution for lending money on pledges would answer in London. Many branch establishments would be necessary, and they would scarcely be so economically conducted as the establishments belonging to private individuals. The rates of interest charged by pawnbrokers are

high; but the average profits of their trade are not so great as might be inferred from a hasty glance at the preceding tables, which nevertheless fully prove that having recourse to pawnbrokers is an improvident mode of raising money. It is, however, a great convenience to many persons who could not raise money for temporary purposes in any other way. Those pawnbrokers who take out a licence to receive pledges in gold and silver do a considerable amount of business in that way, and of course not with the poorest classes. In 1838 a company was formed in London, called the 'British Pledge Society,' which proposed lending money at one-half the rate of interest allowed by the 39 & 40 George III. c. 99, and without making any charge for duplicates. This society also pledged itself to make good losses in case of fire, for which casualty pawnbrokers are not liable. The bill of incorporation, after being read a first time in the House of Commons, was abandoned.

There is a Mont de Piété at Moscow on a very extensive scale, the profits of which support a founding hospital. They are numerous in Belgium. From a paper read by Rawson W. Rawson before the London Statistical Society in 1837, the following appear to be the terms of the Mont de Piété of Paris:—"Loans are made upon the deposit of such goods as can be preserved to the amount of two-thirds of their estimated value; but on gold and silver, four-fifths of their value is advanced. The present rate of interest is 1 per cent. per month, or 12 per cent. per annum. The Paris establishment has generally from 600,000 to 650,000 articles in its possession, and the capital constantly outstanding may be estimated at about 500,000*l.* The expense of management amounts to between 60 c. and 65 c. on each article, and the profits are wholly derived from loans of 5 francs and upwards. Articles not redeemed within the year are sold, subject however, as in England, to a claim for restoration of the surplus, if made within three years."

The statistical tables published by the French minister of commerce show the

operations of the Mont de Piété of Paris and those of the large towns in France during the year 1833. The number of articles pledged in Paris in 1833 was 1,064,068; average sum advanced on each, 14s. 11d. The number of articles redeemed was 844,861: on 178,913 articles the interest was paid and the duplicate renewed; 50,656 articles, on which the sum of 36,391*l.* had been advanced, were forfeited, being one-twentieth in number, but less than one-twentieth in value.

**PECULIARS, COURT OF.** [ECCLESIASTICAL COURTS, p. 803.]

**PEDLAR.** This word is said by Dr. Johnson to be a contraction from *petty dealer*, formed into a new term by long and familiar use; and a pedlar is defined by him to be "one who travels the country with small commodities." The same writer defines a *hawker* to be "one who sells his wares by proclaiming them in the street."

The legal sense of hawker is an itinerant trader, who goes about from place to place, carrying with him and selling goods; and a pedlar is only a hawker in small wares. In the various acts of parliament which impose duties upon them and regulate their dealings, they are always named in conjunction as hawkers and pedlars; and no distinction is made between them.

It has been for more than a century the opinion in England that the conduct of trade by means of fixed establishments is more beneficial to the public than that of itinerant dealers; and it cannot be denied that the local trader being better known and more dependent upon his character than one who continually travels from place to place, there is a greater security for the respectability of his dealings. Accordingly statutes have been made from time to time, which require hawkers and pedlars to take out licences and to submit to specific regulations and restrictions, which are supposed to protect the resident trader as well as the public from unfair dealing. These reasons, however, have been given subsequently to justify the laws; for the statutes which originally required licences for hawkers and imposed these

duties appear to have merely contemplated a means of increasing the revenue; and that this was the object of the legislature appears from the fact of pawnbrokers and others having been also required to take out licences. (8 & 9 Wm. III. c. 25; and 9 & 10 Wm. III. c. 27.)

The provisions by which the licences to hawkers and pedlars are now regulated are contained in the statute 50 George III. c. 41. By that Act, the collection and management of the duties on hawkers and pedlars in England was given to the commissioners for licensing and regulating hackney coaches; but this duty has since been transferred to the commissioners of stamps by the 75th section of the statute 1 & 2 Wm. IV. c. 22. By the provisions of the latter statute, "all the powers, provisions, regulations, and directions contained in the statute 50 George III. c. 41, or any other act relating to the duties on hawkers and pedlars, are to be enforced by the commissioners of stamps; and all the powers, provisions, regulations, and directions, forfeitures, pains and penalties imposed by any acts relating to the management of duties on stamps, so far as the same are applicable to the duties on hawkers and pedlars, are declared to be in full force and effect, and are to be applied and put in execution for securing and collecting the last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully as if they were repeated and specially enacted in the statute 1 & 2 Wm. IV. c. 22." The duty of granting licences to hawkers and pedlars and enforcing the law against such persons is now therefore intrusted to the commissioners of stamps; the particular conditions and regulations under which such licences are to be granted are contained in the above-mentioned statute 50 George III. c. 41.

Before a licence is granted to a person desirous of trading and travelling as a hawker or pedlar, the applicant must produce to the commissioners of stamps a certificate, signed by the officiating clergyman and two householders within the parish in which he resides, attesting

that he is of good character and a fit person to be licensed. Upon this certificate being given, the commissioners grant the licence, which is only in force for one year, and the party who receives it is subject to a duty of 4*l.* per annum, and an additional duty of 4*l.* per annum for each beast if he travels with a "horse, ass, mule, or other beast bearing or drawing burthen;" and these duties are to be paid at the time of receiving the licence. The duties have not been altered since 1789. All persons who act as hawkers or pedlars without such a licence are liable to a penalty of 50*l.*

Among other regulations, the hawker or pedlar is required by the Act to "cause to be written in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart, or waggon, or other vehicle in which he carries his goods, and of every room and shop in which he trades, and likewise upon every handbill or advertisement given out by him, the words 'Licensed Hawker,' together with the number, name, or other mark of his licence;" and in case of his omission so to do, he is liable to a penalty of 10*l.*; and every unlicensed person who places these words upon his goods is liable to a penalty to the like amount. A hawker and pedlar travelling without a licence, or travelling and trading contrary to or otherwise than is allowed by the terms of his licence, or refusing to produce his licence when required to do so by inspectors appointed by the commissioners, or by any magistrate or peace-officer, or by any person to whom he shall offer goods for sale, is liable in each case to a penalty of 10*l.* A person having a licence, and hiring or lending it to another person for the purpose of trading with it, and also the person who so trades with another's licence, are each liable to a penalty of 4*l.* A hawker or pedlar dealing in or selling any smuggled goods, or knowingly dealing in or selling any goods fraudulently or dishonestly procured, forfeits his licence, and is for ever afterwards incapacitated from obtaining or holding a new licence. By the stat. 48 Geo. III. c. 84, s. 7, if any hawker or

pedlar shall offer for sale tea, brandy, rum, geneva, or other foreign spirits, tobacco, or snuff, he may be arrested by any person to whom the same may be offered, and taken before a magistrate, who may hold him to bail to answer for the offence under the Excise laws.

By the provisions of the statutes 29 Geo. III. c. 26, § 6, and also of 50 Geo. III. c. 41, § 7, no person coming within the description of a hawker or pedlar can lawfully, either by opening a shop and exposing goods to sale by retail in any place in which he is not a householder or resident, or by any other means, sell goods either by himself or any other person by outcry or auction, under a penalty of 50*l.* Hawkers were not allowed formerly to sell goods in market-towns, except on a fair or market day; but this restriction was done away with by 35 Geo. III. c. 91.

It is further provided by the 18th section of the 50 Geo. III. c. 41, that if any person shall forge or counterfeit any hawker's or pedlar's licence, or travel with, or produce, or show any such forged or counterfeited licence, he shall forfeit the sum of 300*l.* Persons who hawk fish, fruit, victuals, or goods, wares, or manufactures made or manufactured by such hawkers, or by their children, are not required to take out a licence; nor are tinkers, coopers, glaziers, plumbers, harness-menders, or other persons usually trading in mending kettles, tubs, household goods, or harness of any kind. (*Chitty's Commercial Law*, vol. ii. p. 163; *Burn's Justice*, tit. 'Hawkers.')

The amount raised by these licences is too insignificant as an object of revenue. They are in fact a tax on the consumers, like all other licences. The true policy is to let a person sell his goods where and how he can. Competition will ensure the consumer here, as in other cases, the best and cheapest article. The pedlar carries his wares into districts where the people have not access to the best markets, and thus he tends to correct the dealings of the settled trader. He also carries his wares to people who would often not know of the existence of them. The hawker is now one of the active instruments in diffusing cheap

books among the population, and a large part of the sale of the cheap periodicals is in his hands, particularly in the north of England and in Scotland. Thirty years ago, Francis Horner, writing to Dugald Bannatyne, of Glasgow, speaks of "that very remarkable traffic in books round Glasgow by itinerant retailers." The hawker is therefore employed in the diffusion of knowledge, and is a great benefactor to society, and as such should be free from all taxes that are imposed on him in addition to those which he and other dealers pay.

*Amount of Revenue from Hawkers' Licences:—*

England.			
1800	£ 8,963	1830	23,392
1810	17,898	1840	32,512
1820	29,236	1843	27,100
Scotland.			
1840	3,284	1843	2,092

*Rate paid for each Licence:—*

England.	at £4.	at £8.	at £12.	at £16.
1820	5369	912	36	2
1830	663	832	14	3
1840	6020	1005	30	2
1843	4793	927	40	2
Scotland.				
1840	705	58		
1843	411	56		

**PEERS OF THE REALM.** This term is equivalent to Peers of Parliament, that is, those noblemen who have a seat in the House of Lords. The 'Realm,' that is, the 'Roiaume,' is the Kingdom of England, Scotland and Ireland have also their peers; but those who are simply peers of Scotland and Ireland are not Peers of the Realm, or Peers of Parliament, or Peers of the United Kingdom, for all these expressions are used to signify the same thing.

Without meaning to decide the question whether the lords spiritual are strictly peers of the realm, the persons who fall under this description are the dukes, marquesses, earls, viscounts, and barons [Duke, &c.], and this without reference to the accident of age: an earl, for instance, is a peer of the realm, though a minor, but he does not sit or vote in

the House of Lords till he is twenty-one. Women may also be peeresses of the realm in their own right, as by creation, or as inheritors of baronies which descend to heirs general, but they have no seat or vote in the house of lords. The wives of peers are peeresses.

On the remote origin of this order, and of the privileges belonging to it, especially that form of a house, in which, in concurrence with the spiritual lords, they consider every proposal for any change in the laws of the realm, and have an affirmative or a negative voice respecting it, and of being also the supreme court of judicature before whom appeal may be made from the judgment of nearly all inferior courts, great obscurity rests. The reports of the committee of the house of peers, which sat during several parliaments about the years 1817, 1818, and 1819, on the dignity of a peer of the realm, contain a great amount of information on these topics, but leave undecided some of the greater and more important questions connected with it.

Every peer of the realm, being of full age and of sound mind, is entitled to take his seat in the house of peers, and to share in all the deliberations and determinations of that assembly. He has privilege (perhaps not very distinctly defined) of access to the person of the king or queen regnant to advise concerning any matter touching the affairs of the realm. If peers of the realm are charged with any treason, felony, misprision, or as accessories, they are not subject to the ordinary tribunals, but the truth of the charge is examined by the peers themselves; they cannot be arrested in civil cases; they give their affirmation on honour when they sit in judgment, and answer bills in chancery upon honour; but when examined as witnesses they must be sworn. 'Words,' says Blackstone, (Book iii. c. 8) 'spoken in derogation of a peer, a judge, or other great officer of the realm, which are called *scandalum magnatum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a private person, yet when spoken in disgrace of such high and respectable

characters, they amount to an atrocious injury, which is redressed by an action on the case founded on many ancient statutes; as well on behalf of the crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained.'

Peers are tried for misdemeanors in the same way as other people. The lords spiritual are also, in all cases, tried by the ordinary courts. Peeresses have the same privileges as peers, whether they are peeresses by birth, creation, or marriage; but if a peeress by marriage marry a commoner, she loses her privileges.

The crown may at its pleasure create a peer, that is, advance any person to any one of the five classes; which is now done either by writ or patent. [BARON; LETTERS PATENT; NOBILITY.] A peer cannot be deprived of the dignity or any of the privileges connected with it, except on forfeiture of the dignity by being attainted for treason or felony; and the dignity must descend, on his death, to others (as long as there are persons within the limitation of the grant), with all the privileges appurtenant to it, usually to the eldest son, and the eldest son of that eldest son in perpetual succession, and so on, keeping to the eldest male representative of the original grantee. Some deviation from this rule of descent, however, has occasionally occurred, special clauses having been introduced into the patent, which limit the descent of the dignity in a particular way, as in the case of the creation of Edward Seymour to the dukedom of Somerset, in the reign of Edward VI., when it was declared that the issue of the second marriage of the duke should succeed to the dignity in preference to the son of a former marriage. But generally, and perhaps universally for the two last centuries, the descent of a dignity (cases of baronies in fee, as they are called, being now for a moment excluded) has been to the next male heir of the blood of the person originally ennobled; sometimes with remainders to the next male heir of his father or grandfather.

The crown has sometimes granted the dignity of the peerage to a person, with remainder to the female issue or to the female kindred of the grantee and their heirs, as in the case of the Nelson peerage. In these cases it has generally happened either that the party had no male issue to inherit, and that the other males of the family were also without male issue, or that there was already a dignity inheritable by the male heir of the party on whom a new dignity was conferred to descend to his female issue. A pension has also sometimes been settled by Parliament on a person, at the time when he has been made a peer; the pension is granted by the Parliament on the recommendation of the crown.

The peers who possess what are called baronies in fee, are the descendants and representatives of certain old families, for the most part long ago extinct in the male line, but which had in their day summons to parliament as peers, and whose dignity it has been assumed descended like a tenement to a daughter, if only one daughter and heir, or to a number of daughters as coheirs, when there was no son. If A. die seised of a barony in fee, leaving B. a daughter and only child, and M. a brother, the dignity shall inhere in B. in preference to M., and shall descend on the death of B. to her eldest son. In case A., instead of leaving B. his only daughter, leave several daughters, B., C., D., &c. and no son, the dignity shall not go to M., but among the daughters; and since it is imparticipable, it is in a manner lost, as long as those daughters, or issue from more than one of them, exist. But should those daughters die with only one of them having left issue, and that issue a son, he shall inherit on the death of his annts. This is what is meant by the dignity of a peer of the realm being *in abeyance*: it is divided among several persons, not one of whom possessing it wholly, none of them can therefore enjoy it. [ABEYANCE.] But the crown has the power of determining the abeyance; that is, it may declare its pleasure that some one of the daughters, or the eldest male representative of some one

of the daughters, shall possess the dignity, as would have been the case had there been a single daughter only; and in case of an heir thus entering into possession of the dignity, he shall take that precedence among the barons in the house of peers which belonged to the family of whom he is the representative. A female who is only a coheir of a coheir may also have the abeyance determined in her favour, as was lately the case with Mrs. Russell, now Baroness De Clifford. It is out of this privilege of the crown that the peerage cases arise, of which there are some before the house of lords in almost every session of parliament. A party sees reason to think that the crown may be induced to determine a certain abeyance in his favour, if he can only prove that he is the representative of one of the coheirs. This proof, which is often a troublesome and expensive process, inasmuch as it may be necessary to go back into the fourteenth or fifteenth century, is to be made to the satisfaction of a committee of privileges of the house of peers, and on the report of such committee that the claimant has shown himself in a satisfactory manner to be the proper representative of the blood of one of the coheirs of one of these ancient baronies, the crown has of late years often yielded to the reasonable request. In fact, without this, in a country like ours, where lands often descend to female heirs, it would be difficult to maintain a really ancient nobility.

Many of the peers who belong to the higher orders of nobility have baronies in fee inherent in them; so that if A., one of them, die, leaving a daughter being an only child, and a brother, the brother shall take the superior title, and the barony descend to the daughter and the heirs of her body. An eldest son of a peer enjoying a barony and a superior dignity is sometimes called to the house of peers in his father's barony. When this done, it is by writ of summons without a patent of creation (it not being in fact a creation of a new dignity, but only in anticipation of the son's possession of it), and this is the case also when a barony is taken out of abeyance.

Thus the English portion of the house of peers, or house of lords, for they are terms used in precisely the same sense, are the lords spiritual, that is, the archbishops and bishops, and the lords temporal, who are of one of the five orders (though many of the dukes possess dignities of the four inferior kinds also, and their ancestors may have long had seats in that house in those inferior dignities before the family was raised to the dukedom), and these are either persons who have been created peers by the crown—who have been admitted into the peerage by favour of the crown in virtue of the determination of an abeyance, or who have inherited the dignity from some ancestor on whom it had been conferred.

The fullest information on all points connected with the archæological part of this subject is to be obtained from the Reports of the Committee of the House of Lords before referred to. Biographical accounts of the more eminent of the persons who have possessed these dignities, are to be found in that very valuable book, Dugdale's 'Baronage of England.' In 1708, Arthur Collins, a London bookseller, published in a single volume, an account of the peers then existing and their ancestors, a work of great merit. The demand for it appears to have been great, as it was followed by other editions in quick succession. It assumed a higher character in 1734, when it appeared in four handsome octavo volumes, great additions having been made to every article. From that time there has been a succession of editions, each professing to be improvements on the preceding, and each bringing up the state of the peerage to the time when the work was printed. The best of these, which is in nine bulky octavo volumes, was published under the superintendence of Sir Egerton Brydges. But as titles become extinct, and, consequently, the families bearing them are left out of the peerage-books, those who wish to possess a complete account of those persons, must procure many of the earlier editions of the work, as well as that which, being the latest, will, for the most part, be called the best.

PEINE FORTE ET DURE. The "strong and hard pain," which is denoted by these words, was a species of torture used by the English law to compel persons to plead, when charged with crimes less than treason, but amounting to felony. It was applicable whenever the accused stood mute on his arraignment, either by his refusal to put himself upon the ordinary trial by jury, or to answer at all, or by his peremptorily challenging more than twenty jurors, which was a contumacy equivalent in construction of law to actually standing mute. This proceeding differed essentially from the torture which generally prevailed in Europe, and which, as connected with the royal prerogative, was also practised in England for several centuries, inasmuch as the object of the *peine forte et dure* was to force submission to the regular mode of trial prescribed by the law, and not to compel testimony or the confession of a crime.

The origin of this practice is uncertain. It appears from Fleta, and also from Britton (cap. 22), that the punishment in the reign of Edward I., when the first traces of it appear, consisted merely of severe imprisonment, with a diet barely sufficient to prevent starvation, until the offender repented of his contumacy, and consented to put himself upon his trial. Shortly afterwards, however, the practice of loading the sufferer with weights and pressing him to death appears to have become the regular course. In the 'Year Book,' 8 Henry IV., 1 (1406), the judgment upon persons standing mute, as approved by advice of all the judges, was "that the marshal should put them in low and dark chambers, naked except about their waist; that he should place upon them as much weight of iron as they could bear, *and more*, so that they should be unable to rise; that they should have nothing to eat but the worst bread that could be found, and nothing to drink but water taken from the nearest place to the gaol, except running water; that the day on which they had bread they should not have water, and *e contrà*; and that they should lie there till they were dead." There is no trace of any statute

or royal ordinance, or of any authority besides this judicial resolution, to justify a change in the mode of proceeding so material as to affect the life of the party. The term by which it was denoted was also changed from *prisonne* to *peine forte et dure*; and from this period, for more than three centuries, until it was virtually abolished by the stat. 12 Geo. III. c. 20 (1772), *pressing* to death continued to be the regular and lawful mode of execution for persons who stood wilfully mute upon their arraignment for felony. The press-yard at Newgate at the present day retains its name as derived from this barbarous practice.

Blackstone states that the *peine forte et dure* was rarely carried into practice (*Commentaries*, vol. iv. p. 328). It is probable that it was not of frequent occurrence, because, with this fearful punishment for contumacy before their eyes, men would naturally, for the most part (as Hale says), "bethink themselves and plead." It is, however, repeatedly mentioned in the Year Books as an existing proceeding; it is stated as the law by Staundforde, Coke, Hale, and Hawkins, in their several treatises on the Criminal Law, and the number of the recorded instances in which it is directly or incidentally mentioned, seem to show that it was much more prevalent than has been commonly supposed. The motive of the prisoner in standing mute and submitting to this heavy punishment was to save his attainder, and prevent the corruption of his blood and consequent forfeiture of his lands in case he was attainted of felony. In the 21st of Henry VI. (1442), Juliana Quicke, who was indicted for high treason, in speaking contemptuous words of the king, had the *peine forte et dure* because she would not plead (Croke's *Charles*, 118); in the margin of an inquisitio post mortem of Anthony Arrowsmith, in the 40th of Eliz. (1598), are the words "Prest to death" (Surtees's *History of Durham*, vol. iii. p. 271); and in 1659 Major Strangeways was tried for the murder of John Fussell, before Lord Chief Justice Glynn, and, refusing to plead, was pressed to death in Newgate. In the pamphlet which very minutely narrates



the particulars of this execution, it is stated that the prisoner died in about eight minutes, many people in the press-yard humanely casting stones upon him to hasten his death. (Barrington's *Antient Statutes*, p. 85, note.) In still more recent times, it appears from the Old Bailey Sessions Papers, that at the January Sessions in 1720 one Phillips was pressed for a considerable time, until he begged to stand his trial; and at the December Sessions, 1721, Nathanael Haws continued under the press, with 250 lbs., for seven minutes, and was released upon his submission. Mr. Barrington says that he had been furnished with two instances in the reign of George II., one of which happened at the Sussex assizes before Baron Thompson, and the other at Cambridge, in 1741, when Mr. Baron Carter was the judge. (Barrington's *Antient Statutes*, p. 86.) In these later instances the press was not inflicted, until by direction of the judges the experiment of a minor torture had been tried, by tying the culprit's thumbs tightly together with strings. It is said in Kelyng's *Reports*, p. 27, to have been the constant practice at Newgate, in the reign of Charles II., that the two thumbs should be tied together with whipcord, that the pain might compel the culprit to plead. The adoption of this course was no doubt dictated by merciful motives, and was intended by the judges to prevent the necessity of having recourse to the peine forte et dure; but it was wholly unauthorised by law. The practice was finally discontinued in consequence of the statute 12 Geo. III. cap. 20, which provides that every person who shall stand mute when arraigned for felony or piracy shall be convicted of the same, and the same judgment and execution shall be awarded against him as if he had been convicted by verdict or confession.

**PENANCE** (in Latin, *Penitentia*) is a censure or punishment, imposed by the ecclesiastical law, for the purgation or correction of the soul of an offender, in consequence of some crime of spiritual cognizance committed by him. Thus a person convicted of adultery or incest was adjudged to do penance in the church

or market, bare-legged and bare-headed in a white sheet: and was required to make a public confession of his crime, and to express his contrition in a prescribed form of words. After a judgment of penance has been pronounced, the ecclesiastical courts may, upon application by the party, take off the penance, and exchange the spiritual censures for a sum of money to be paid and applied to pious uses. This exchange is called a commutation for penance; and the money agreed or enjoined to be paid upon such a commutation may be sued for in the ecclesiastical court. The peine forte et dure imposed upon a person who stood mute on his trial at the common law is often inaccurately termed penance. [PEINE FORTE ET DURE.]

**PENITENTIARIES.** [TRANSPORTATION.]

**PENSION**, a payment, generally made annually or at some other shorter and regular period.

Before the reign of Queen Anne, the kings of England alienated or encumbered their hereditary possessions at pleasure. By the 1 Anne, c. 7, the power of burthening the revenue of the crown by improvident grants, to the injury of the successors of the throne, was materially abridged. This statute, after reciting that "the necessary expenses of supporting the crown, or the greatest part of them, were formerly defrayed by a land revenue, which hath from time to time been impaired and diminished by the grants of former kings and queens of this realm," enacts that no grant of manors, lauds, &c. shall be made by the crown from and after the 25th of March, 1702, beyond the term of thirty-one years, or for three lives, reserving a reasonable rent. As this clause applied only to the land revenue, it was enacted by another clause, that no portion of other branches of revenue, as the excise, post-office, &c., should be alienable by the crown beyond the life of the reigning king. On the accession of George III., in consideration of the surrender of the larger branches of the hereditary revenue, a civil list was settled on his majesty, amounting originally to 800,000*l.*, and afterwards increased to

300,000*l.*, on which the pensions were charged. There were no limits, except the Civil List itself, within which the grant of pensions was confined; and at various times, when debts on this list had accumulated, parliament voted considerable sums (Sir Henry Parnell, in his work on 'Financial Reform,' says "some millions") for their discharge. In February, 1780, during the administration of Lord North, Mr. Burke introduced his bill for the better security of the independence of parliament, and the economical reformation of the civil and other establishments. In this bill it was recited that the pension lists were excessive, and that a custom prevailed of granting pensions on a private list during his majesty's pleasure, under colour that in some cases it may not be expedient to divulge the names of persons on the said lists, by means of which much secret and dangerous corruption may be hereafter practised. Mr. Burke proposed to reduce the English pension list to a maximum of 60,000*l.*, but the bill, as passed, fixed it at 95,000*l.* This act (22 Geo. III. c. 82) asserted the principle that distress or desert ought to be considered as regulating the future grants of such pensions, and that parliament had a full right to be informed in respect to this exercise of the prerogative, in order to ensure and enforce the responsibility of the ministers of the crown. Mr. Burke's speech on introducing his bill is in the third volume of his 'Works,' ed. 1815.

Up to this time the Civil List pensions of Ireland, the pensions charged on the hereditary revenues of Scotland, and the pensions charged on the  $4\frac{1}{2}$  per cent. duties, had not been regulated by parliament.

In Ireland the hereditary revenue of the crown was used as a means of political corruption, the English act of 1 Anne, already cited, not being applicable to Ireland. In a speech of Mr. Hutchinson, secretary of state, made in the Irish House of Commons, in June, 1793, he stated that the gross annual hereditary revenue of Ireland amounted to 764,627*l.*, reduced by various charges to 275,102*l.* only: that the disposition of this revenue was in the hands of the

king; that "his letters and seals were the only authority for using it, and the only voucher allowed by the Commissioners of Accounts, and by the House of Commons;" and that there was no Board of Treasury executing their functions under the authority of parliament. The Irish parliament, in 1757, had come to a unanimous resolution, "That the granting of so much of the public revenue in pensions, is an improvident disposition of the revenue, an injury to the crown, and detrimental to the people." The Irish pensions then amounted to 40,000*l.*: in two years after the above resolution was passed, an addition of 26,000*l.* was made to them; and in 1778 they were nearly double the amount at which they stood in 1757. In 1787 leave was refused to bring in a bill to limit the amount of pensions, and to disable persons holding pensions for a term of years, or during pleasure, from sitting and voting in parliament. Mr. Forbes, who moved this bill, stated that "it was a practice among certain members of the house to whom pensions had been granted, to carry them into the market and expose them for sale." In 1790 Mr. Forbes again moved resolutions, stating "that the Pension List amounted to 101,000*l.*, exclusive of military pensions; that the increase of pensions, civil and military, since February, 1784, had been 29,000*l.*; and that many of these pensions had been granted to members of parliament during the pleasure of the crown." These resolutions were not adopted. In 1793, when the whole policy of the Irish government was changed, among other beneficial measures introduced and recommended on the authority of the lord-lieutenant, was a bill to limit the amount of pensions and to increase the responsibility of the Treasury, which was passed into a law. By this act (33 Geo. III. c. 34, Irish statutes), the pensions on the Civil List in Ireland were limited to 80,000*l.*, allowing a sum of 1200*l.* only to be granted in each year, until such reduction was effected. Grants held during the pleasure of the crown, and converted into grants for life to the same parties and to the same amount, were exempted from the limitations of the

act. This act effected a surrender of the hereditary revenues for the life of the king, and the principle of appropriating money by parliamentary authority. These restraints on the crown were not, however, equal in efficiency to those contained in the English statute of Anne. At the time of the act 33 Geo. III. being passed, the Irish pensions amounted to 124,000*l.*, and the amount was not reduced to 80,000*l.* until 1814. By the 1 Geo. IV. c. 1, the Irish Pension List was further reduced to 50,000*l.*, no grants exceeding 1200*l.* to be made in any one year until the list was so reduced.

The statute of 1 Anne, having been passed prior to the Union, did not affect Scotland; and pensions were accordingly granted by the crown for life, or for lives, in possession or in reversion, without restriction in amount, or in the duration of the grant, other than the amount of the revenues, and the claims and burdens already upon them. By the 50 Geo. III. c. 3, the principle of parliamentary interference was established in reference to the hereditary revenues of Scotland, the amount of the pensions was reduced to 25,000*l.*, and no more than 800*l.* was to be granted in any one year, until such reduction was effected. At this period, the Civil List pensions of Scotland amounted to 39,379*l.* By the 1 Geo. IV. c. 1, the hereditary revenues of Scotland were placed to the account of the consolidated fund.

Certain duties, called the four and a half per cent. duties, were not withdrawn from the private control of the crown until 1830, when they were surrendered by William IV. for his life, the pensions then chargeable upon them continuing payable. On the accession of King William IV. there was nothing therefore to prevent the Pension Lists of England, Ireland, and Scotland being consolidated; and this was effected by 1 Wm. IV. c. 25, which also made provision for their reduction, on the expiration of existing interests, from an amount of 145,750*l.* net, to a future maximum sum of 75,000*l.* The Pension List for England was at this period 74,200*l.* net; Scotland, 23,650*l.*; Ireland, 47,900*l.*

In 1830 the ministry of the Duke of Wellington was overthrown, on the question of referring the Civil List (which comprises the Pension List) to a select committee, Sir Henry Parnell's motion to that effect being carried by 233 against 204.

In February, 1834, in order to define with greater precision the class of persons to whom the grant of pensions ought to be confined, Lord Althorp, chancellor of the exchequer (afterwards Earl Spencer), moved resolutions to the following effect, which were agreed to by the House of Commons:—"That it is the bounden duty of the responsible advisers of the crown to recommend to his Majesty for grants of pensions on the Civil List, such persons only as have just claims on the royal beneficence, or who, by their personal services to the crown, by the performance of duties to the public, or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country."

On the accession of Queen Victoria, in 1837, the subject of pensions was again considered; and a select committee of the House of Commons, appointed to inquire into the Civil List, recommended—"That in place of granting a sum of 75,000*l.* for Civil List pensions, her majesty should be empowered to grant in every year new pensions on the Civil List to the amount of 1200*l.*, these pensions to be granted in strict conformity with the resolutions of the House of Commons, of February, 1834." These views were adopted by the House, and embodied in the 1 Vict. c. 2, the words of the resolution being introduced into the Act. [CIVIL LIST.] Since the accession of Queen Victoria, still greater force has been given to the spirit of the Act, in consequence of the recommendations of a select committee of the House of Commons, appointed in December, 1837, to inquire how far the pensions charged on the Civil List, as settled on the accession of William IV., ought to be continued, "having due regard to the just claims of the parties, and to economy in the public expenditure." This com-

mittee, after a searching inquiry into the merits of each case on the Pension List, recommended the immediate suspension of several pensions, to be regrantd on the responsibility of the government, should the circumstances of the parties render it necessary; others they considered should determine at an earlier period than specified in the original grant; and for several pensions, they considered it unadvisable to make any future provision, that is, that they should be no longer paid. In their Report, dated July, 1838, the committee recommended that in the case of all future Civil List pensions, the reasons and motives of the grant should be set forth in the warrant of appointment; that in pensions granted for services to others than the individual by whom the services were rendered, care should be taken, if these pensions are granted for younger lives, that is, to the sons or daughters of the individual entitled to the pension, that no undue increase of charge should be made; and that such grants should be avoided, except under very peculiar circumstances: they recommended also that pensions for the relief of distress should be granted only on the condition of their ceasing when the circumstances of the parties no longer require their continuance; that all pensions should be held liable to deduction or suspension in the event of the parties being appointed to office in the public service; that under no circumstances should the mere combination of poverty with the hereditary rank of the peerage be considered as a justification of a grant of a pension. The committee also recommended that, in order to avoid any possible doubt or misconception hereafter, enactments should be made with respect to the Irish and Scotch revenue, analogous to those of the English act of 1 Anne.

It appears from the Report of the Committee on Pensions that the charge of pensions has been reduced as follow :—

	England.	Ireland.	Scotland.	4½ per Cents.	Total.
	£	£	£	£	£
1782	85,000	80,000	13,300	16,700	195,000
1820	74,200	67,300	37,100	34,300	212,900
1830	74,200	53,900	32,200	24,100	185,400
1838	The lists consolidated				140,900

Mr. Finlayson, of the National Debt Office, calculated, in 1838, the amount of saving which will be derived from the new system, assuming the ratio of decrease to continue as in the three previous years, and that the average ages of persons to whom new grants of pensions are made will be the same as heretofore :—

	Old Pension.	New Pension.	Total.
	£	£	£
1839	132,632	2,384	135,016
1844	97,540	8,077	105,617
1849	59,258	13,398	72,656
1854	30,792	18,255	49,047
1858	13,161	21,716	34,877

Mr. Finlayson was furnished by the committee with the ages of 866 persons in the receipt of pensions; and in 828 of these cases the date of the grant was ascertained. The mean age at which pensions were granted to males he found to be 32, and to females 36; and out of every 1000*l.* payable, 257*l.* was paid to males and 743*l.* to females. Mr. Finlayson complains that “the females have understated their ages very considerably, and sometimes with a contempt of all probability, more than one lady having set down her age at 39, forgetting that she has been forty-five years in receipt of the pension, and this from an aversion to own the age of 40.”

The following is an account of the total amount of pensions granted in each year, ending the 20th day of June, from 1829 to 1837 inclusive; soon after which period the act 1 Viet. c. 2, came into operation, and the power of granting pensions was restricted. [CIVIL LIST.]

1829	£1830	1834	£2878
1830	6353	1835	2748
1831	5401	1836	1310
1832	2638	1837	3230
1833	900		

Besides the pensions on the Civil List, the regulation of which at different periods has been referred to above, there are vast sums annually appropriated by parliament to the payment of pensions of another description. Thus every year the sum of about 1,350,000*l.* was voted on account of the pensioners of Chelsea Hospital; 245,000*l.* to the out-pensioners of Greenwich; 148,990*l.* to widows of

officers of land-forces; and to officers in each of the civil departments of the government large sums are annually paid in pensions and superannuation allowances. The half-pay to retired officers of the navy and army may also be considered in the light of a pension. In 1832 the charge on the public for pensions, superannuations, and half-pay amounted to 6,152,702*l.* (*Financial Reform*, p. 203, 4th edit.) "The operation of the superannuation, the grant of retired allowances, the naval and military pensions granted for good services, the pensions granted by the 57 George III. c. 65, for persons who have occupied high political offices, and the pensions for diplomatic and consular services, have to a great extent superseded one of the original purposes of the Pension List. These acts have also substituted a strictly defined and regulated system of reward, for a system which depended on the arbitrary selection of the crown or the recommendation of the existing government, exposed to the bias of party or personal considerations." (*Report on Pensions*, No. 218, Sess. 1838.) Sir Henry Parnell, in chapter xii. of his 'Financial Reform,' shows that there are many abuses to be remedied in reference especially to superannuations. "Nothing (he says) can be more extravagant and inconsistent with a proper guardianship of the public purse than the system of salaries and superannuations now in operation. The salaries are so much higher than they ought to be, that every officer and clerk has sufficient means of making a provision for infirmity and old age. But notwithstanding this fact, as to the sufficiency of salary, in the true spirit of profusion, a great superannuation allowance has been added." In 1830 there were nearly one thousand officers in the public service, with salaries of 1000*l.* a year and upwards, enjoying amongst them 2,066,574*l.*; and of these there were 216 persons whose salaries averaged 4429*l.*; and yet from the passing of the Superannuation Act in 1810 till 1830, the charge for civil superannuation was increased from 94,550*l.* to 480,081*l.* It was stated in the Third Report of the Finance Committee (Sess. 1828), that in not a few cases persons

obtained superannuations, as unfit for the public service, who enjoyed health and strength long afterwards, and discharged the active duties of life in private business. In 1831 the treasury established some very important restrictions relative to superannuation allowances, which are given in a Parliamentary Paper (No. 190, 2nd Session, 1831).

For an account of pensions under the French monarchy the reader may refer to the *Encyclopédie Méthodique* (section 'Finances').

PERJURY (from the Latin *perjuri-um*), by the common law of England, is the offence of falsely swearing to facts in a judicial proceeding. To constitute this offence the party must have been lawfully sworn to speak the truth by some court, judge, or officer having competent authority to administer an oath; and, under the oath so administered, he must wilfully assert a falsehood in a judicial proceeding respecting some fact which is material to the subject of inquiry in that proceeding. In a legal sense, therefore, the term has a much narrower import than it has in its popular acceptance. A person may commit perjury by swearing that he *believes* a fact to be true which he *knows* to be false. It is immaterial whether the false statement has received credit or not, or whether any injury has been sustained by an individual in consequence of it. The offence of perjury is a Misdemeanor.

The history of this offence in the common law is entirely dependent upon the history of the trial by jury. Where perjury is mentioned by Bracton and Fleta, they exclusively allude to the offence of jurors in giving a wilfully false verdict; and as the jury appear to have been originally merely witnesses, speaking from their personal knowledge of the facts, and sworn to *speaking the truth*, their misconduct in giving a false decision might be justly treated as perjury. [JURY.] There is no trace in the statutes or in the reported proceedings of the courts, of any penal law against perjury in witnesses, as distinguished from that of jurors, earlier than the reign of Henry VIII.; the date of the introduction of the witness's oath to speak the truth, in

use at the present day, is unknown, and no form of process for securing the attendance of witnesses (except where they were added to the jury) seems to have existed before the reign of Elizabeth. [JURY.] These facts tend to show that the offence of perjury has received its present definite character by the corresponding change in the functions of the jury. This change was complete in the time of Sir Edward Coke, as he defines perjury nearly in the same terms in which it is described in more modern text-books. (3 *Inst.*, 163.)

A defendant in equity is guilty of perjury by false swearing in his answer to a plaintiff's bill. The defendant is in fact also a witness, for he is bound to answer on oath to the matter contained in the bill, and the plaintiff may read the whole or any integral portion of the defendant's answer as evidence against such defendant. In the case of an answer in equity, the offence of false swearing falls exactly within the definition given at the head of this article.

The punishments of perjury by the common law were, discretionary fine and imprisonment; the pillory, which punishment was abolished (by 1 Viet. c. 23) in 1837; and a perpetual incapacity to give evidence in courts of justice. As to the penalties for Perjury, see LAW, CRIMINAL, p. 205. There are many statutes by which oaths are required as a sanction to statements of facts under a variety of circumstances, and otherwise than in judicial proceedings; and these statutes frequently declare that false swearing in such cases shall amount to perjury, and be punishable as such. The Commissioners on Criminal Law have pointed out the objections to provisions of this kind, and have suggested a mode of rendering the law upon the subject more precise by drawing a line of distinction between false testimony in courts of justice and false swearing to facts on other occasions. See *Fifth Report*, pp. 25 and 50.

By the 5 & 6 William IV. c. 62, declarations may now be substituted for oaths in many extrajudicial proceedings. [OATH.]

## PERPETUATION OF TESTI-

MONY. A party who has an interest in property, but not such an interest as enables him immediately to prosecute his claim, or a party who is in possession of property and fears that his right may at some future time be disputed, is entitled to examine witnesses in order to preserve that testimony, which may be lost by the death of such witnesses before he can prosecute his claim, or before he is called on to defend his right. This is effected by such party filing a bill in equity against such persons as are interested in disputing his claim, in which bill he prays that the testimony of his witnesses may be perpetuated. This is the only relief that the bill prays. If the prayer of the bill is granted, a commission issues to examine the witnesses, whose depositions are taken in the usual way in suits in equity. The depositions, when taken, are sealed up and retained in the custody of the court which grants the commission. When they are required to be used as evidence, they can be so used, by permission of the court, by the party who has filed his bill or those who claim under him, and they can be read by the direction of the court as evidence on a trial at law, if it is then proved that the witnesses are dead, or from any sufficient cause cannot attend. If the witnesses are living when the trial takes place, and can attend, they must be produced. A defendant to such a bill may join in the commission, and may examine witnesses under the commission, and he is entitled to use their depositions as evidence in his favour at a future trial. (1 *Mer.*, 434.)

A bill to perpetuate testimony may be filed by any person who has a vested interest, however small, in that thing to which he lays claim. The parties, defendants to such bill, are those who have some adverse interest to the plaintiff.

## PERSONALTY AND PERSONAL PROPERTY. [CHATELS.]

PETITION OF RIGHT. In the first parliament of Charles I., which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject, which they alleged had been violated, should have been solemnly recognised by a legislative enactment. With this view they framed a petition to

the king, in which, after reciting various statutes by which their rights and privileges were recognised, they pray the king "that no man be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by act of parliament,—that none be called upon to make answer for refusal so to do,—that freemen be imprisoned or detained only by the law of the land, or by due process of law, and not by the king's special command, without any charge,—that persons be not compelled to receive soldiers and mariners into their houses against the laws and customs of the realm,—that commissions for proceeding by martial law be revoked: all which they pray as their rights and liberties according to the laws and statutes of the realm."

To this petition the king at first sent an evasive answer: "The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs or oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative." This answer being rejected as unsatisfactory, the king at last pronounced the formal words of unqualified assent, "Let right be done as it is desired." (1 Car. I. c. 1.) Notwithstanding this, however, the ministers of the crown caused the petition to be printed and circulated with the first insufficient answer.

PETIT SERJEANTY. [SERJEANT.]

PEW. The word *pew* seldom occurs in writers upon ecclesiastical law, who almost invariably use the expression "church seat."

There were no pews in churches until about the period of the Reformation, prior to which the seats were moveable, such as chairs and benches, as we see at this time in the Roman Catholic churches on the Continent. Before that time no cases are to be found of claims to pews, although in the common-law books two or three claims are mentioned to seats in a church, or particular parts of a seat, which were probably moveable benches or forms.

"By the general law and of common

right," Sir John Nicholl observed (in *Fuller v. Lane*, 2 *Add. Ecl. Rep.*, 425), "all the pews in a parish church are the common property of the parish; they are for the use *in common* of the parishioners, who are all entitled to be seated orderly and conveniently so as best to provide for the accommodation of all." The right of appointing what persons shall sit in each seat belongs to the ordinary (3 *Inst.*, 202); and the churchwardens, who are the officers of the ordinary, are to place the parishioners according to their rank and station; but they are subject to his control if any complaint should be made against them." (*Pettman v. Bridger*, 1 *Phill.*, 323.) A parishioner has a right to a seat in the church without any payment for it, and if he has cause of complaint in this respect against the churchwardens, he may cite them in the ecclesiastical court to show cause why they have not seated him properly; and if there be persons occupying pews who are not inhabitants of the parish, they ought to be displaced in order to make room for him. This general right however of the churchwardens as the officers of the ordinary is subject to certain exceptions, for private rights to pews may be sustained upon the ground of a faculty, or of prescription, which presumes a faculty.

The right by faculty arises where the ordinary or his predecessor has granted a licence or faculty appropriating certain pews to individuals. Faculties have varied in their form; sometimes the appropriation has been to a person and his family "so long as they continue inhabitants of a certain house in the parish:" the more modern form is to a man and his family "so long as they continue inhabitants of the parish" generally. The first of these is perhaps the least exceptionable form. (Sir J. Nicholl, 2 *Add.*, 426.)

Where a faculty exists, the ordinary cannot again interfere: it has however been laid down in the ecclesiastical court that where a party claiming by faculty ceases to be a parishioner, his right is determined. Sir John Nicholl states, "Whenever the occupant of a pew in the body of the church ceases to be a pa-

rishioner, his right to the pew, howsoever founded, and how valid soever during his continuance in the parish, at once ceases." (Fuller v. Lane, 2 *Add.*, 427.) The same doctrine has been sanctioned by the Court of King's Bench. (Byerley v. Windus, 5 *Barn. and Cress.*, 18.) But in a case in the Court of Exchequer, chief baron Macdonald was of a different opinion. The question there was whether there could be in law a prescription for a person living out of the parish to have a pew in the *body* of the church, and it was held that there might (Lousley v. Hayward, 1 *Y. and L.*, 583). As prescription presumes a faculty, these opinions seem to be at variance. Where a claim to a pew is made by prescription as annexed to a house, the question must be tried at law. The courts of common law in such cases exercise jurisdiction on the ground of the pew being an easement to the house (Mainwaring v. Giles, 5 *Barn. and Ald.*, 361); and if the ecclesiastical courts proceed to try such prescription, a prohibition would issue. In order to support a claim by prescription, *occupancy* must be proved, and also *repair* of the pew by the party, if any has been required. (Pettman v. Bridger, 1 *Phill.*, 325; Rogers v. Brooks, 1 *T. R.*, 431; Griffith v. Matthews, 5 *T. R.*, 297.) The above observations apply to pews in the *body* of the church. With respect to seats in the chancel, it is stated in the Report of the Ecclesiastical Commission, page 49, "the law has not been settled with equal certainty, and great inconvenience has been experienced from the doubts continued to be entertained. Some are of opinion that the churchwardens have no authority over pews in the chancel. Again, it has been said that the rector, whether spiritual or lay, has in the first instance at least a right to dispose of the seats; claims have also been set up on behalf of the vicar; the extent of the ordinary's authority to remedy any undue arrangement with regard to such pews has been questioned." (Gibson, 226; 3 *Inst.*, 202; 1 Brown and Goul., *Rep.*, 4; Griffith v. Matthews, 5 *T. R.*, 298; Clifford v. Wicks, 1 *B. and Ad.*, 498; Morgan v. Curtis, 3 *Man. and Ry.*, 389; Rich v. Bushnell 4 *Hagg. Ecc. Rep.*, 164.)

With regard to aisles or isles (wings) in a church, the case is different. The whole isle or particular seats in it may be claimed as appurtenant to an ancient mansion or dwelling-house, for the use of the occupiers of which the aisle is presumed to have been originally built. In order to complete this exclusive right it is necessary that it should have existed immemorially, and that the owners of the mansion in respect of which it is claimed should from time to time have borne the expense of repairing that which they claim as having been set up by their predecessors. (3 *Inst.*, 202.)

The purchasing or renting of pews in churches is contrary to the general ecclesiastical law. (Walter v. Gunner and Drury, 1 *Hagg. Consist. Rep.*, 314, and the cases referred to in the note, p. 318; Hawkins and Coleman v. Compeigne, 3 *Phill.*, 16.)

Pew-rents, under the church-building acts, are exceptions to the general law; and where rents are taken in populous places, they are sanctioned by special acts of parliament. Pew-rents in private unconsecrated chapels do not fall under the same principle, such chapels being private property.

**PHYSICIAN.** The first class of medical practitioners in rank and legal pre-eminence is that of the physicians. They are (by statute 32 Henry VIII.) allowed to practise physic in all its branches, among which surgery is enumerated. The law therefore permits them both to prescribe and compound their medicines, and to perform operations in surgery as well as to superintend them. These privileges are also reserved to them by the statutes and charters relating to the surgeons and the apothecaries. Yet custom has distinguished the classes of the profession. The practice of the physician is universally understood, as well by their college as the public, to be properly confined to the prescribing of medicines, which are to be compounded by the apothecaries; and in so far superintending the proceedings of the surgeon as to aid his operations by prescribing what is necessary to the general health of the patient, and for the purpose of counter-acting any internal disease. It would be



impossible to enumerate here the legal qualifications required by all the different European universities; it will therefore be sufficient to mention those recognised in the British dominions.

In the university of Oxford, for the degree of Bachelor of Medicine, it is necessary that the candidate should have completed twenty-eight terms from the day of matriculation; that he should have gone through the two examinations required for the degree of bachelor of arts; that he should have spent at least three years in the study of his profession; and that he should be examined by the Regius Professor of medicine and two other examiners of the degree of M.D. in the theory and practice of medicine, anatomy, physiology, and pathology; in materia medica, as well as chemistry and botany, so far as they illustrate the science of medicine; and in two at least of the following ancient medical writers, viz. Hippocrates, Celsus, Aretæus, and Galen. After taking the degree of Bachelor of Medicine, a licence to practise is delivered to the candidate, under the common seal of the university.

For the degree of Doctor of Medicine, the candidate is required to have completed forty terms from the day of matriculation; and to recite publicly in the schools a dissertation upon some subject, to be approved by the Regius Professor, to whom a copy of it is afterwards to be presented.

At Cambridge a student, before he can proceed to the degree of Bachelor of Medicine, must have entered on his sixth year, have resided nine terms, and have passed the previous examination: the necessary certificates, &c. are much the same as those required at Oxford. A Doctor of Medicine must be of five years' standing from the degree of M.B.

Since the university of London has been chartered, in 1837, the degrees of Bachelor and Doctor of Medicine, among others, have been conferred there. The regulations under which these degrees are conferred are printed in the London University Calendar for 1845.

In Scotland the degree of doctor of medicine is conferred by the universities of Edinburgh, Glasgow, Aber-

deen, and St. Andrews, from which last-named university a diploma can still be obtained without residence; the regulations at the others contain nothing particularly worthy of notice.

In Ireland the King and Queen's College of Physicians exercise much the same authority as the English college. The degrees of Bachelor and Doctor of Medicine conferred by Trinity College, Dublin, rank with the same degrees respectively from Oxford and Cambridge, and are never given without previous study in arts, which occupies four years. For the degree of M.D. five years must have elapsed since the degree of M.B. was conferred; the candidate is then to undergo a second examination, and write and publish a Latin thesis on some medical subject.

By the English law a physician is exempted from serving on juries, from serving various offices, and from bearing arms. He is (according to Willcock, p. 105) responsible for want of skill or attention, and is liable to make compensation in pecuniary damages (as far as such can be deemed a compensation) to any of his patients who may have suffered injury by any gross want of professional knowledge on his part.

In England physicians were once sometimes rewarded by the grant of church livings, prebendaries, and deaneries; and the names of some are preserved who were made bishops. The fee of a physician is honorary, and it cannot be recovered by an action at law; and every person professing to act as a physician is precluded from assuming a different character, as that of a surgeon or apothecary, for the purpose of recovering his fees, although he may in fact be a surgeon or apothecary, or a person who had no right to practise as a physician. It has likewise been determined that a custom in the defendant's neighbourhood to pay physicians at a certain rate is immaterial, and gives them no greater right to bring the action than in places where no such custom is known. (Willcock, p. 3.) A physician however of great eminence may be considered reasonably entitled to a larger recompense than one who has not equal practice, after

it has become publicly understood that he expects a larger fee; inasmuch as the party applying to him must be taken to have employed him with a knowledge of this circumstance. (*Ibid.*)

**PHYSICIANS, ROYAL COLLEGE OF**, was founded through the instrumentality of Linaere, who obtained, by his interest with Cardinal Wolsey, letters patent from Henry VIII., dated in the year 1518. This charter granted to John Chambre, Thomas Linaere, Ferdinand de Victoria, Nicholas Halsewell, John Francis and Robert Yaxley, that they, and all men of the same faculty of and in the city of London, should be in fact and name one body and perpetual community or college; and that the same community or college might yearly and for ever elect and make some prudent man of that community expert in the faculty of medicine, president of the same college or community, to supervise, observe, and govern for that year the said college or community, and all men of the same faculty, and their affairs, and also that the president and college of the same community might elect four every year, who should have the supervision and scrutiny, &c. of all physicians within the precinct of London. The statute (14 Henry VIII.) confirmed this charter, and further ordained, that the six persons above named, choosing to themselves two more of the said commonalty, should from henceforth be called and cleaped elects; and that the same elects should yearly choose one of them to be president of the said commonalty; and then provided for the election of others to supply the rooms and places of such elects as should in future be void by death or otherwise, which was to be made by the survivors of the same elects. The statute (32 Henry VIII.) provides that from thenceforth the President, Commons, and Fellows might yearly, at such time as they should think fit, elect and choose four persons of the said Commons and Fellows, of the best learned, wisest, and most discreet, such as they should think convenient, and have experience in the faculty of physic, to search and examine apothecaries' wares, &c. This last appointment is independent of the constitution of the body, the persons so ap-

pointed being officers for a special purpose; and it has been usual to select for this office the same four persons in whom the government of the physicians is reposed by the charter and statute of the 14th of that king.

The constituted officers then of this corporation are the eight elects, of whom one is to be president, and four governors, who have generally borne the name of censors. There is nothing to be gathered from the charter or statutes in any way tending to exclude any of the elects, except the president, from the office of censor; and as no duties are assigned to the elects, except those of filling up their own number, electing one of themselves to be president, and granting testimonials to country practitioners, they may be rather regarded as candidates for the office of president than as active officers of the corporation. The college is bound to choose four censors, for the purpose of discharging the duties confided in it, which are to be executed by these officers. It is also incumbent on the elects to preserve their number, so that there may at no time be less than five, including the president, as they would not, after a further reduction, be capable either of electing a president or choosing others to fill the vacancies in their own body. (*Willcock, On the Laws of the Medical Profession*, p. 32.) It is evident that the charter so far incorporated all persons of the same faculty, of and near London, that every person on the 23rd of September in the 10th year of the reign of Henry VIII. falling within that description, was entitled to be admitted into the association. Such of them as had availed themselves of this privilege, and others subsequently admitted, are the persons described by statute 32 Henry VIII. as 'Commons and Fellows' (quoted in Willcock, p. 13). But as to the persons who should afterwards enjoy that distinction, the original charter and all subsequent statutes are silent. James I. and Charles II. granted charters to this body. The first is silent as to the mode of continuing it; but the charter of Charles, after limiting the number of Fellows to forty, directed that when a vacancy should occur in that number, the remainder should elect one

of the most learned and able persons skilled and experienced in physic, then of the commonalty of members of the college. Each of these charters seems to have been granted with a view to the enactment of a bill to the same effect, as the kings respectively pledged themselves to give it the royal assent. No statute has been at any time passed in pursuance of this purpose; and it is very doubtful how far and in what manner the charters have been accepted by the college, though they have certainly been several times acted upon. (Willcock, p. 34.)

The licentiates of the college who may practise within the precincts of London and seven miles round it were (until 1836) of three orders, viz. Fellows, Candidates, and mere Licentiates. The last of these classes, generally denominated licentiates, are those who have only a licence to practise physic within the precincts above described. The second class was abolished in 1836. The first class are those who have received that licence, but whose licence also shows that they are admitted to the order of fellows. This licence has often been called a *diploma*, but as it confers no degrees, the word is not properly applied, according to its more strict signification.

The common law having given every man a right to practise in any profession or business in which he is competent, the effect of 14 Henry VIII. must be taken to be this; it has left to every man his common law right of practising in the profession of physic, as in any other profession, if competent, and has appointed the president and college to be judges of this competency. (Willcock, p. 38.) The mode of examination is wholly in the discretion of the college, which has confided the immediate direction of it to the censors. It has however also appointed that the doors of the censors' chamber shall be open to all fellows who may think proper to be present, and that they may take part in the examination, should they think fit; and that the fellows may have an opportunity of availing themselves of this right, it is appointed that all examinations shall take place at a court held at certain regular intervals. (*Ibid.*, p. 41.)

The order of Candidates was abolished

in 1836, as above stated, but there were reserved to students then in the universities of Oxford and Cambridge their *inchoate* rights.

The order of Fellows comprises those who are admitted into the fellowship, community, commonalty, or society of the college. The charter incorporated all physicians then legally practising in London, so that each of them who thought proper to accept it became *ipso facto* a member or fellow; but as all future practitioners, within the precincts of and seven miles round that city, were required to obtain the licence of the college, there soon arose two orders of the profession. The fellows attempted by various by-laws to limit their own number, but seem to have considered the licentiates as members of the college, or the commons, and themselves as forming a select body for the purpose of government. To this state of the society the statute 32 Henry VIII. seems to allude in speaking of the "commons and fellows." The charter of Charles II. expressly notices these orders as forming the body of the society, inasmuch as it directed that new fellows should be elected from among the commons of the society. (*Ibid.*, p. 44.) The by-laws that formerly existed as to the election of fellows have been repealed, and the following are the regulations published by authority of the college, by which it is now governed.

*Regulations of the Royal College of Physicians of London.*—The College of Physicians, having for some years past found it necessary from time to time to make alterations in the terms on which it would admit candidates to examination and license them to practise as physicians, has reason to believe that neither the character nor object of those alterations, nor even the extent of the powers with which it is invested, has been fully and properly understood.

The college therefore considers it right at this time to make public a statement of the means which it possesses within itself of conferring the rank and privileges of physician on all those who, having had the advantage of a liberal education, both general and professional, can prove their qualifications by producing

proper testimonials and submitting to adequate examinations.

Every candidate for a diploma in medicine, upon presenting himself for examination, shall produce satisfactory evidence, 1. of unimpeached moral character; 2. of having completed the twenty-sixth year of his age; and, 3. of having devoted himself for five years, at least, to the study of medicine.

The course of study thus ordered by the college comprises:—

Anatomy and physiology, the theory and practice of physie, forensic medicine, chemistry, materia medica and botany, and the principles of midwifery and surgery.

With regard to practical medicine, the college considers it essential that each candidate shall have diligently attended, for three entire years, the physicians' practice of some general hospital in Great Britain or Ireland, containing at least one hundred beds, and having a regular establishment of physicians as well as surgeons.

Candidates who have been educated abroad will be required to show that, in addition to the full course of study already specified, they have diligently attended the physicians' practice in some general hospital in this country for at least twelve months.

Candidates who have already been engaged in practice, and have attained the age of forty years, but have not passed through the complete course of study above described, may (under special circumstances to be judged of by the Censors' Board) be admitted to examination upon presenting to the censors' board such testimonials of character, general and professional, as shall be satisfactory to the college.

The first examination is in anatomy and physiology, and is understood to comprise a knowledge of such propositions in any of the physical sciences as have reference to the structure and functions of the human body.

The second examination includes all that relates to the causes and symptoms of diseases, and whatever portions of the collateral sciences may appear to belong to these subjects.

The third examination relates to the treatment of diseases, including a scientific knowledge of all the means used for that purpose.

The three examinations are held at separate meetings of the censors' board. The *vivâ voce* part of each is carried on in Latin, except when the board deems it expedient to put questions in English, and permits answers to be returned in the same language.

The college is desirous that all those who receive its diploma should have had such a previous education as would imply a competent knowledge of Greek, but it does not consider this indispensable if the other qualifications of the candidate prove satisfactory; it cannot however, on any account, dispense with a familiar knowledge of the Latin language, as constituting an essential part of a liberal education; at the commencement therefore of each oral examination, the candidate is called on to translate *vivâ voce* into Latin a passage from Hippocrates, Galen, or Aretæus; or, if he declines this, he is, at any rate, expected to construe into English a portion of the works of Celsus, or Sydenham, or some other Latin medical author.

In connection with the oral examinations, the candidate is required, on three separate days, to give written answers in English to questions on the different subjects enumerated above, and to translate in writing passages from Greek or Latin books relating to medicine.

The qualifications required for Extra-Licentiates, *i. e.* persons approved for practising physie out of the city of London and seven miles thereof, pursuant to statute 14 & 15 Henry VIII. chap. 5, sect. 3, are the same as those above stated for Licentiates or members.

Those who are approved at all the examinations receive a diploma under the common seal of the college.

The college gives no particular rules as to the details of previous education, or the places where it is to be obtained. It will be obvious however, from a reference to the character and extent of the study above described, the manner in which the examinations are conducted, and the mature age of the candidates, as

affording full time for acquiring the necessary knowledge, that there will be ample security afforded to the public and the profession, that none but those who have had a liberal and learned education can presume, with the slightest hope of success, to offer themselves for approval to the censors' board; and as the college trusts that, by a faithful discharge of its own duty, it can promise itself the satisfaction of thus continuing to admit into the order of English physicians a body of men who shall do it honour by their qualifications, both general and professional, it is prepared to regard in the same light, and address by the same appellation, all who have obtained its diploma, whether they have graduated elsewhere or not.

Much curious information respecting the antiquities of the College of Physicians is to be found in 'The Gold-headed Cane,' an amusing and interesting little volume by the late Dr. Macmichael. He tells us (p. 120) that its very first meetings immediately after its establishment, 1518, were held in the house of Linacre, called the Stone House, No. 5, Knight Rider Street, which still belongs to the college. About the time of the accession of Charles I. the college removed to another spot, and took a house of the dean and chapter of St. Paul's, at the bottom of Amen Corner. During the civil wars their premises were condemned as part of the property of the church, and sold by public auction; on which occasion Dr. Hamey became the purchaser, and two years afterwards, 1649, gave them in perpetuity to his colleagues. The great fire of London, 1666, consumed the college and the whole of the library with the exception of one hundred and twelve folio volumes. For the next few years the meetings of the fellows were generally held at the house of the president, while a new college was being built on a piece of ground that had been bought in Warwick Lane. This was completed in four years, and was opened, without any particular ceremony, on the 25th of February, 1674, under the presidency of Sir George Ent. Here the fellows continued to hold their meetings till within a few years, when (as Dr.

Macmichael says) "the change of fashion having overcome the *genius loci*," the present new college, at the north-west corner of Trafalgar Square, was opened on the 25th of June, 1825.

#### PIEPOWDER COURT [MARKET.]

**PILLORY.** The pillory was a mode of punishment for crimes by a public exposure of the offender, used for many centuries in most of the countries of Europe under various names. In France it was called *pillorie*, and in more recent times *carcan*; and in Germany, *pranger*. It was abolished in England in the year 1837, by the statute 1 Viet. c. 23.

In modern times the English pillory was a wooden frame or screen, raised several feet from the ground, and behind which the culprit stood, supported upon a platform, his head and arms being thrust through holes in the screen, so as to be exposed in front of it; and in this position he remained for a definite time, sometimes fixed by law, but usually assigned at the discretion of the judge who passed the sentence. The form of the judgment was, that the "defendant should be set *in* and *upon* the pillory." In a case which occurred in 1759, an under-sheriff of Middlesex was fined fifty pounds and imprisoned for two months by the Court of King's Bench, because, in executing the sentence upon Dr. Shebbeare, who had been convicted of a political libel, he had allowed him to be attended upon the platform by a servant in livery, holding an umbrella over his head, and to stand without having his neck and arms confined *in* the pillory. (*Burrow's Reports*, vol. ii. p. 791.)

The public exposure of the offender as a punishment is liable to many objections, besides the inequality of its operation; and the efficacy of all punishments which merely disgrace the offender, has been questioned by some of the most distinguished modern writers on criminal law. (Rossi, *Traité de Droit Pénal*, p. 483; Haas, *Projet de Code Pénal Belge*, vol. i. p. 143.) In consequence of the recent direction of public opinion to this subject, punishments of this kind have been lately expunged from most of the modern systems of penal

law in Europe. In England the pillory was abolished in 1837, by the statute above referred to; in France, the carcan was discontinued upon the revision of the Code Pénal in 1832; and in the numerous codes and schemes of codes which have appeared in the different states of Germany during the present century, punishments by public exposure of the person or otherwise tending generally to degrade the character have been omitted. (*Entwürfe für Würtemberg, Sachsen, Hannover, Baden, &c.*) It is remarkable that the Bavarian code of 1813, which is generally founded on just and enlightened principles of criminal law, and which formed the commencement of the series of improvements which have since taken place in Germany, contains the objectionable provision that a criminal capitally convicted shall, in certain aggravated cases, undergo a public exposure on the *pranger* for half an hour, previously to his execution. (*Strafgesetzbuch für Baiern*, art. 6.)

PILOT. [SHIPS; TRINITY HOUSE.]

PIOUS USES. [USES, CHARITABLE.]

PIPE-OFFICE, or more properly the Office of the Clerk of the Pipe, a very ancient office in the court of Exchequer. It was formerly at Westminster, but was removed to Somerset House towards the close of the last century, where the duties of the office were performed, and where the records belonging to it were kept, till the abolition of the office of clerk of the pipe, and with it that of the comptroller of the pipe, by the act 3 & 4 William IV. c. 99. By that act the records which had been accumulated in the performance of the duties of this office were transferred to the custody of the king's remembrancer of the exchequer.

The business of the office had been much reduced by an act of 52 George III., which transferred the management of portions of the land revenue of the crown to the office of woods and forests, and by acts of 1 & 2 George IV. c. 121, and 3 Geo. IV. c. 88, which transferred the duty of recording what were called the foreign accounts, or those of supplies granted by parliament, to the audit and tax offices.

Still in this office was made up year by year the record called the great roll of the pipe, or more correctly the great roll of the exchequer, in which was entered the revenue accruing to the crown in the different counties of the realm, for the charging and discharging the sheriffs and other accountants. Of this roll the deputy clerk of the pipe gives the following account in reply to the circular questions of the Commissioners on the Public Records in 1832:—"The ancient revenues here recorded were either certain or casual. The certain revenue consisted of farms, fee farms, castle-guard rents, and other rents of various kinds; the casual part was composed of fines, issues, amercements, recognizances, profits of lands and tenements, goods and chattels received into the hands of the crown on process of extents, outlawry, diem clausit extremum, and other writs and processes; wards, marriages, reliefs, suits, seignories, felons' goods, deodands, and other profits casually arising to the crown by virtue of its prerogative." (*Report of Commissioners of Public Records*, 1837, p. 198.)

Of these annual rolls there is a series commencing in the second year of King Henry II., in the year of our Lord 1155, and continued to the breaking up of the office in 1834. It is justly spoken of by Madox, the author of 'The History of the Exchequer,' as "a most stately record," and it is said that no country in Europe possesses any record that can be compared with it. Two only of these rolls have been lost. It approaches, as we see, in antiquity to about seventy years from the date of the preparation of the great survey of England by the Conqueror, known by the name of 'Domesday Book.' It abounds with valuable notices of the persons who are distinguished in English history through the whole of this period, and of the transactions of the time, recorded in every instance by a contemporaneous hand.

There is one roll of a still earlier date, which has evidently been saved by some fortunate chance when the other rolls of the same reign perished. It was formerly thought to be the roll of the 1st

of Henry II.; but the antiquaries of the seventeenth century, on an imperfect survey of its contents, determined that it belonged to the fifth year of King Stephen. Accordingly it has been regarded in the office as a roll of that reign, and as the roll of the 5th of Stephen it has been repeatedly quoted by historical writers, and especially by Dugdale, in his 'History of the Baronage of England,' and who, in numerous instances, has referred facts mentioned in it to the fifth year in the reign of Stephen. Madox also often quotes it as the roll of the 5th of Stephen, though he saw enough in it to lead him to refer it to the reign of Henry I. This roll has been printed and published by the late Commissioners on the Public Records, and Mr. Hunter, one of the sub-commissioners, prefixed to it a disquisition on the year to which it belongs, in which he has shown that it is the roll of the thirty-first year of the reign of King Henry I.: thus carrying it back into the reign of one of the sons of the Conqueror, from which scarcely any national record except this has descended, and removing at once all the great historical difficulties which have arisen from referring it to the reign of his successor Stephen.

The Commissioners on the Public Records have printed other portions of the early pipe rolls, but the volumes have not been completed.

Beside the great roll, there was a similar roll prepared by the comptroller of the pipe, which has been called the chancellor's roll. This series is far less complete than the other; and as it differed but slightly from the great roll, and was never consulted, and as it appeared desirable that access should be made easier to it than could be the case while it remained in the custody of the officers of the exchequer, the late Commissioners on the Public Records directed the removal of it to the British Museum.

As to the name of Pipe applied to this officer and to the great roll of the exchequer, one conjecture is, that the rolls are so called because in form they resemble pipes, another that they were transmitted through a certain pipe from

one room of the exchequer to another. It may be considered an undecided question.

PIRACY, PIRATE (immediately from the Latin *pirata*, and remotely from the Greek *πειρατής*, which had the same signification as our word pirate).

The offence of piracy, by the common law of England, consists in committing those acts of robbery and depredation upon the high seas, which, if committed upon land, would have amounted to felony there. (4 Black., 72.)

By statute some other offences are made piracy, as by stat. 11 & 12 Wm. III. c. 7, if any natural-born subject commits any act of hostility upon the high seas against others of his majesty's subjects, under colour of a commission from any foreign power, or if any commander or other sea-faring person shall betray his trust, and run away with any ship, boat, ordnance, ammunition, or goods; or if he yields them up voluntarily to a pirate, or conspires to do these acts; or if any person assaults the commander of a vessel to hinder him from fighting in defence of his ship, or confines him, or makes or endeavours to make a revolt on board, he shall for each of these offences be adjudged a pirate. The commanders or seamen wounded, and the widows of such seamen as are slain, in an engagement with pirates, are entitled to a bounty not exceeding one-fiftieth part of the value of the cargo on board, which is to be equally divided; and seamen who are wounded are entitled to a pension from Greenwich Hospital.

By the stat. 8 Geo. I. c. 24, the trading with known pirates, or furnishing them with stores or ammunition, or fitting out any vessel for that purpose, or in any wise consulting, combining, confederating, or corresponding with them; or the forcibly boarding any merchant vessel, though without seizing or carrying her off, and destroying or throwing any of the goods overboard, shall be deemed piracy. (4 Blacks., 72, 269; and Abbott, *On Shipping*, 140, 141, 142, 239.) The dealing in slaves on the high seas is piracy, and subjects a person to transportation for life or not less than fifteen years, or to be imprisoned for not exceeding three years.

(5 Geo. IV. c. 113; 1 Vict. c. 91.) The 6 Geo. IV. c. 49, for encouraging the capture of piratical vessels, provides that officers, seamen, marines, and others, actually on board any king's ship at the taking or destroying any piratical vessel, shall receive the sum of 20*l.* for each pirate taken or killed during the attack, and the sum of 5*l.* for every other man of the crew, not taken or killed, who shall have been alive on board the pirate ship at the beginning of the engagement.

Persons guilty of piracy were formerly tried before the judge of the Admiralty court, but the stat. 28 Henry VIII. c. 15. enacted that the trial should be before commissioners of oyer and terminer, and that the course of the proceedings should be according to the law of the land. Further provision was made with respect to the trial of offences on the high seas by the statutes 39 Geo. III. c. 15; 43 Geo. III. c. 113; 46 Geo. III. c. 54; and now, by the stat. 4 & 5 Wm. IV. c. 36, § 22, the trial of offences committed on the high seas is in the Central Criminal Court. Piracy is in some cases punished with death, in others by transportation. [Law, CRIMINAL, p. 189, 190.]

PIRATE. [PIRACY.]

PIX, TRIAL OF THE. [MINT.]

PLEBEIANS. [AGRARIAN LAWS.]

PLEDGE is a thing bailed (delivered for a temporary purpose) as a security to the bailee (receiver), for the performance of some engagement on the part of the bailor (the deliverer). When the pledge is for a debt, more especially where it is given to secure a loan at interest, it is commonly called a pawn. [PAWN-BROKER.] In bailments the degree of care required from the bailee varies according to circumstances. When the bailment is for the sole benefit of the bailee, he is bound to use the greatest care, and is excused by nothing but unavoidable accident or irresistible force. When the bailment is for the mutual benefit of bailor and bailee, the bailee is bound to take the same care of the thing bailed as a prudent man usually does of his own. When the bailment is for the sole benefit of the bailor, it is sufficient if

the bailee keep the goods bailed as carefully as he does his own, however negligent he may be. Different writers on the law of bailments refer the contract of pledge to each of these divisions. Perhaps the conflicting opinions may, to a certain extent, be reconciled by distinguishing between the different objects which the pledge is intended to secure, and the engagements which it is intended to protect. First, the pledge is sometimes, though rarely, given for the sole benefit of the pledgee, as where, after a contract is completely made, one party gives to the other a pledge for its performance. Secondly, which is the ordinary case, the pledge may be for the mutual benefit of bailor and bailee, as in the case of a loan of goods on hire, or of money at interest, accompanied by a pawn, in which case the pawn gives security to the bailee and purchases credit for the bailor. Thirdly, the pledge may be given for the purpose of obtaining a gratuitous loan of goods or of money, or of procuring some other advantage to the bailor only. It would appear that in the first of these three cases the bailee would be liable for the consequences of slight negligence; in the second, for the consequence of the want of ordinary care; and in the third, for gross negligence only.

The pledgee is bound to return the pledge and its increments, if any, upon being requested so to do, after the performance of the engagement. This duty is extinguished if the pledge has ceased to exist by some cause for which the pledgee is not answerable. But he is responsible for all losses and accidents which happen after he has done anything inconsistent with his duty as pledgee, or has refused to do his duty. When the full amount of the debt or duty therefore is tendered and refused, and the pledge is detained, the pledge is at the sole risk of the pledgee: it is so if the pledgee misuse the pledge. In every case where the pledge has sustained injury from the wrongful act or default of the pledgee, the owner may recover damages to the amount of the injury, in an action on the case. By the act of pledging, the pledger impliedly warrants



that the property is his own, and such as he can rightfully pledge.

The contract of pledge may be extinguished by the performance of the engagement for which the pledge was given, or by satisfying the engagement in any other manner, either in fact or by operation of law, as by the acceptance of a higher security without an express stipulation that the pledge shall continue.

If the engagement, to protect which the pledge is given, be not performed within the stipulated time, the pledgee may sell, upon giving due notice to the pledgor. If no time be stipulated, the pledgee may give notice that he requires a prompt fulfilment of the engagement, upon non-compliance with which he may sell.

The possession of the pledge does not affect the right of the pledgee to enforce performance of the engagement, unless there be a special agreement, by which he has engaged to resort to the pledge only, or to look to it in the first instance.

Though the pledgee may sell, he cannot appropriate the pledge to himself upon the default of the pledgor; nor is he at liberty to use it without the permission of the owner, expressed or clearly implied. Such an implication arises where the article is of a nature to be benefited by or to require being used, in which latter case the use is not only justifiable, but indispensable to the discharge of the duty of the pledgee. (*Commentaries on Law of Bailment*, by Storey.)

As to the power of an agent to pledge, see FACTOR; and as to the making land a security for debt, see MORTGAGE.

**PLEDGE** (Roman). The English word formerly denoted a person who was a security for another; but it now denotes a thing which is a security, and generally for a debt.

The chief rules of English law as to mortgaging and pledging are derived from the Roman law, in which, however, there is no distinction among pledges, dependent on the nature of the thing pledged, whether it was a thing moveable or immovable, corporeal or incorporeal; and a thing could not be the subject of pledge unless it could be the

subject of buying and selling, for the power of selling a pledge was an important part of the creditor's security. A man might pledge a thing either for his own or another person's debt. The terms used in the Roman law to express pledging, and also the thing pledged, are *Pignus* and *Hypotheca*. It is properly *hypotheca*, where there is a bare agreement (*nuda conventio*) that a thing shall be a security to a creditor for a debt, and the thing remains in the possession of the debtor. The word *hypotheca* (*ὑποθήκη*) is Greek, and denotes a thing subjected to a claim or demand. When the thing was delivered to the creditor, it was called *Pignus* (Isid., *Orig.*, v., c. 25); and as moveable things would, for obvious reasons, be most frequently delivered, a notion got established among some Roman lawyers, aided by an absurd etymology (*pignus appellatum a pugno*, *Dig.*, 50, tit. 16, s. 238), that the term *pignus* was applicable only to a pledge of moveable things; and this notion has also prevailed in modern times. (Ryall v. Rowles, 1 Vez.) The true etymology of *pignus* seems to be the same as that of *pactum*. It is generally said that *hypotheca* corresponds to the English mortgage, and *pignus* to pawn or pledge; but this is not the case. No ownership was transferred by the Roman *hypotheca*. The term *hypothecation* in English law is still used to express the mortgage of a ship or its cargo.

Originally, when a man wished to borrow money on the security of a thing, he transferred the ownership of the thing to the lender by *mancipatio*, or in *jure cessio*, *sub lege remanipationis*, or *sub fiducia*; and the borrower could recover his ownership by *usureceptio* (Gaius, ii. 59, &c.) when the debt was paid, and in some other cases also. But this mode of giving security was found to be disadvantageous to the debtor, and subsequently the thing was merely put into the hands of the creditor with a power of sale in case the debt was not paid according to the agreement; but this gave the creditor no ownership, and consequently he had no *actio in rem* against any third person, and therefore no sufficient security for his debt. The *prætor's edict* found a

remedy for this by giving to the creditor a real action, called *Serviana actio*, against any person who was in possession of the thing pledged, for the purpose of recovering it; and the extension of this right of action, under the name of the quasi-serviana actio, also called *hypothecaria*, gave to the hypotheca the full character of the *pignus*.

Thus the Roman law recognised the *pignus*, which arose from the *contractus pignoris*, and the *hypotheca*, which arose from the *pactum hypothecæ*. But there were other cases which in the Roman law were considered cases of *pignus*.

The *pignus prætorium* arose when a creditor, by a judicial decree, was allowed to enter into possession (*mittebatur in possessionem*) either of the whole property of a debtor or any part of it; but there was no *pignus* till the creditor took possession. It has been conjectured that this kind of *pignus* owes its origin to the old *pignoris capio*. (Gaius, iv. 26, &c.)

There was also the *tacit hypotheca*, which was founded on certain acts. In the case of *prædia rustica*, the fruits of the ground were a *pignus* to the owner for the rent, even if there was no agreement to that effect, which is a case of the Scotch law of *hypothec*; and if a man lent money for the repairs of a house, the building became a *pignus* for the debt.

The creditor, though in possession of the pledge, could not use it or take the profits of it without a contract to that effect, which was called *antichresis*, or *mutual use*. If he took the profits, he had to render an account of them when his debtor came to a settlement with him; but he was entitled to an allowance for all necessary expenses laid out on the thing pledged, as, for instance, for the repairs of a house.

After the time agreed on for payment was passed, the creditor had the right of selling the pledge and of retaining his debt out of the produce of the sale. If the produce of the sale was not sufficient to discharge the debt, he had a personal action against the debtor for the remainder. Originally perhaps he could only have this right of sale by express contract, but subsequently the right to sell (*jus distrahendi sive vendendi*) was

an essential part of the contract of pledge. Though the creditor was not the owner of the thing (*dominus*), still he could transfer ownership to the purchaser, a doctrine that is only intelligible on the supposition that he sold it as the attorney or agent of the debtor. But the creditor could only sell the thing in respect of the debt for which the thing was pledged, and not in respect of other debts due to him from the debtor, though he might apparently retain the surplus of the sale in his hands as a satisfaction for such other debts. The power of sale was to be exercised pursuant to the terms of the contract; and when there was no agreement as to the form and manner of sale, the law prescribed the mode of proceeding, which the creditor was bound to observe strictly. It was once usual to insert in the contract of pledge a *Lex Commissoria*, that is, a condition by virtue of which the thing pledged became the absolute property of the creditor, if the money was not paid at the time agreed on. But by a constitution of Constantine (*Cod.*, viii., tit. 35) it was forbidden to insert such a clause in the contract. If anything remained over after satisfying the creditor, it belonged to the debtor.

A thing might be pledged to several persons in succession, whose claims were to be satisfied according to their priority in time. But there were some exceptions to this rule introduced by special laws, which gave a preference to certain persons and claims, independent of the order of time; and the constitution of Leo gave a priority to a pledge which was contracted by a public instrument (*instrumentum publicè confectum*), or by a private instrument attested by three witnesses, over every other pledge which was to be proved by any other evidence. This law was intended to prevent fraudulent agreements by which a pledge would be antedated.

When there were several creditors, he who had the priority over all was entitled to sell and pay himself; the surplus, if any, belonged to the creditor who was next in order, and so on till the whole was exhausted. If a creditor who was posterior in order of time, wished to

stand in the place of him who had the priority, he could do so by paying him his debt, and he then occupied (successit) the same place and had the same right as the prior creditor. This doctrine was founded on the assignable character of a pledge, for though the pledgee was not the owner of the thing, and could only sell it in the manner already mentioned, he could transfer his interest to an assignee, and could even transfer to a second pledger the *ius vendendi* when the second pledger was excluded from such right by special contract. (*Dig.*, 20, tit. 3, s. 3.) When a subsequent creditor advanced a sum of money which was applied to the preservation of the thing pledged, for instance, for the purpose of repairing a ship, he had a priority over creditors of earlier date, on the ground of his having by his loan secured the thing. (*Dig.*, 20, tit. 4, s. 5.) The same rule, perhaps somewhat more limited, prevails in our own law as to money lent on the security of a ship.

As the pledger remained the owner of the thing pledged, he could of course sell it, but the purchaser took the thing subject to the pledge. The creditor who was in possession of a pledge was answerable for any damage that befel it owing to *dolus* or *culpa*, that is, fraud or neglect, but he was not answerable for unavoidable loss.

A pledge was determined in various ways; by the destruction of the thing, by the creditor releasing the debtor, by the debtor paying the debt, and in other ways. When the debtor offered the money to his creditor, he was entitled to have the pledge restored to him. This might be obtained by an *actio pignoratitia*, which was an *actio in personam*, and also lay for damages done to or sustained by the thing, or for the surplus of the money if the pledge had been sold by the creditor. The creditor had a *contraria pignoratitia actio* against the debtor for expenses incurred as to the pledge, for any fraud in the matter of the pledge, as passing off base for better metal, and in some other cases.

The Roman law of pledges has been treated by various writers at great length. A compendious view of it is contained in Brinkmann's '*Institutiones Juris Ro-*

mani,' Slesvici, 1822; in Marczoll, '*Lehrbuch der Instit. des Röm. Rechtes*,' Leipzig, 1839; Puchta, '*Cursus der Institutionen*,' ii. 693, first ed., Leipzig, 1842; and in Ayliffe's '*Law of Pledges or Pawns*,' London, 1732; see also '*Dig.*,' 20, tit. 1, &c.; 13, tit. 7; '*Instit.*,' iv., tit. 6; '*Cod.*,' 8, tit. 14, &c.

PLENIPOTENTIARY. [AMBASSADOR.]

PLOUGHBOTE. [COMMON, RIGHTS OF.]

POACHING. [GAME LAWS.]

POLICE is that department of government which has for its object the safety and peace of the community.

Its primary object is the prevention of crime and the pursuit of offenders; but the police system also serves other purposes, such as the suppression of mendicancy, the preservation of order in great thoroughfares, the removal of obstructions and nuisances, and the enforcing of laws which relate to the public health.

In the Anglo-Saxon period the sheriff of each county, chosen by the freeholders in the folkmote, was the chief officer for the conservation of the peace; and in his half-yearly visitations to each hundred in the county, he inquired whether there was any relaxation in the efficiency of the means for effecting this object. The hundred originally consisted of ten divisions, each containing ten freeholders, mutually pledged to repress delinquencies within their district. All males above the age of twelve were obliged to appear at the sheriff's visitation, to state the district to which they belonged, and to be sworn to keep the peace. One out of every ten freeholders had precedence of his companions, and the whole were bound to bring delinquents to justice within thirty days on pain of being themselves liable to penalties. The population was thinly scattered; every man was known to his neighbours; and no man could depart from his dwelling without the consent of his fellow-pledges; and the consent of the sheriff was necessary to enable a man legally to go out of his own county. No man could enter a neighbourhood without being recognised as a stranger; and if there was any suspicion, a hue and cry was raised if the

stranger could give no good account of himself. [HUE AND CRY.]

After the Conquest, the advantages of the system were recognised by several of the Norman kings, particularly by William I., and by Henry I. in the early part of his reign. William I. ordered that every freeman should be under pledges, and Henry I. that views of frank-pledge should be taken in order that none might escape responsibility. But a great innovation was made in the Anglo-Saxon system, when the sheriff, instead of being elected by the freeholders, was appointed directly by the king; and the sheriff's "tourn," or half-yearly visitation, was soon neglected.

When Henry I. instituted the office of justices-itinerant, the functions of the sheriff became of still less importance. By the stat. Merton, c. 10, passed 20th Henry III. (1236), freemen who owed suit to the county or hundred court were allowed to appear by attorney. The stat. Marl., c. 10, c. 24, passed in the 52 Henry III. (1264), dispensed with the attendance of the baronage and clergy at the sheriff's court unless their attendance was specially required; and it also prohibited the justices-itinerant from amercing townships on account of persons above the age of twelve years not having been sworn in pledges for keeping the peace. By these various measures the ancient system was greatly impaired; and the new laws which were introduced from time to time for the purpose of repressing crime do not seem to have been very successful. In 1277, nine years after the passing of the statute of Marlborough, the absence of "quick and fresh pursuit" of felons is noticed as an evil which was increasing. To supply the energy and alacrity of the old system, fines and penalties were imposed by the stat. Westminster, prim., 3 Edward I., sec. 9, on all who neglected to pursue offenders. The statute directs that "all generally be ready and apparelled at the commandment and summonis of the sheriffs, and at the cry of the county to pursue and arrest any felons when any need is." The statute of Winchester, 13 Edward I. (1285), endeavoured to maintain the spirit of the Anglo-Saxon laws

by making the county or hundred responsible in case of a delinquent not being forthcoming, and the duty of apprehending him was cast upon all the king's subjects. This statute also regulated the office of constable, an officer who had succeeded the Anglo-Saxon hundred or tything man. [CONSTABLE.] The prevention of crime, as well as the pursuit of criminals, was also one of the primary duties of constables, and they were charged to make presentment at the assizes, sessions of the peace or leet, of all blood-sheddings, affrays, outeries, rescues, and other offences against the peace. The justices to whom these presentments were made in the first instance, reported directly to the justices-itinerant, or at once to the king or his privy-council; and the supreme executive made provision accordingly. At the same time the responsibility cast upon the hundred quickened the vigilance of the inhabitants; and this responsibility extended to individuals in many cases. The following extracts from the Year-Books of the Exchequer are instances of this: "16 Edward I., Sussex: murder and robbery—township of Tyndon amerced, because it happened by day, and they did not take the offender." "6 Edward II., Kent: manslaughter (upon a sudden quarrel) committed in the highway of Wrotham—three bystanders amerced because they were present when the aforesaid Robert killed the aforesaid John, and did not take him." And in the reign of Elizabeth the popular vigilance which this system had created leads a writer of that day to remark that "every Englishman is a serjeant to take the thief, and who sheweth negligence therein do not only incur evil opinion therefore, but hardly shall escape punishment."

Instead of being almost entirely engaged in agriculture, as in the Anglo-Saxon period, and for several centuries after the Norman conquest, the population is now occupied in great diversity of employments. Persons so engaged, and the more numerous class who live by manual labour, cannot now follow up the "quick and fresh pursuit" of felons, at the cry of the hundred or county: such a duty is incompatible with their ordinary

pursuits. A pursuit at the call of the sheriff would now be quite ineffectual: an offender may have committed a robbery in Lancashire in the evening, and be concealed in the metropolis by the next morning. As a consequence of these various changes, it has not been possible to render the hundred responsible for the delinquencies committed within its limits, and the inhabitants being now, except in a few cases (7 & 8 Geo. IV. c. 31), free from such responsibility, they are careless respecting either the prevention of crime or the apprehension of criminals. While the disposition of the people to aid the public force in these duties was gradually diminishing, the duties of the constable became much more complicated, and required the whole of his time. The same necessity which had rendered a standing army, instead of a militia, a more useful division of employment, had become equally urgent in the case of those on whom devolved the duty of keeping the peace and watching over the security of the community. Instead however of the constabulary force being re-organised, and adapted to a new state of society, it was suffered to remain, with weaker powers, to cope with circumstances which demanded increased vigilance, activity, and intelligence. The office of constable remained still a yearly appointment, and one so obnoxious, that persons were thrust into it who were incapable of executing the duties. Under the most favourable circumstances, the loss of time and the scanty remuneration offered no inducement to exertion; and if the duties were performed with something like energy, by the farmer or small tradesman during his year of office, they were performed at the risk of injuring their private interests. A power so constituted cannot effectually prevent crime; and it is equally inefficient for the purposes of inquiry and presentment. The parish constable usually acts only when called upon by some private party, and the services of the constabulary force are only combined occasionally, when any evil has become so extensive as to excite loud complaint, and then the absence of general regulations and rules of discipline

renders their services of comparatively little value. In the manufacturing districts when any disturbance is apprehended, such a force is useless, and the practice is either to swear in a large number of special constables, or to call in the aid of the military power. The special constables are deficient in the necessary discipline, and they are as timid in the performance of their duties as they are unwilling to undertake them. The appearance of controlling a district by military force is an evil which, under present circumstances, cannot always be avoided. The want of confidence in the old police force is also attested by the existence of numerous voluntary associations for the apprehension and prosecution of felons: their funds are expended in the prosecution of criminals, rather than in the prevention of crime. Some of these associations have rules which bind the members, as in the case of horse-stealing, to take horse and join in pursuit of the thief. Railway Acts bind the companies to maintain a police during the formation of the line. An Act was passed in August, 1840 (3 & 4 Vict. c. 50), entitled "An Act to provide for keeping the peace on canals and navigable rivers." Private watchmen are also extensively employed in docks and warehouses.

To correct the various evils incident to the constitution of the present rural constabulary, the magistrates of Cheshire, in 1829, made the first provincial attempt to improve the administration of police in their county, and they obtained an Act (10 Geo. IV. c. 97) which authorised them to appoint and direct a paid constabulary. A more successful attempt was made at Barnet by a voluntary association, which at first engaged two officers only to patrol a limited district. The plan was found so advantageous, that it was adopted in a more extensive circle. These isolated examples however render the adjacent unprotected districts in a worse state than they were before. The establishment of a new police force for the metropolis, in 1829, has done more towards exhibiting the advantages of employing a trained body of men for all the purposes for which the old constabulary was appointed, than any other circum-

stance. Viewed at first with suspicion and dislike, from its somewhat military organization, the clamour with which it was assailed has died away, and public opinion is now in its favour. Each parish had formerly managed its own police affairs; and before 1829, the total police force of the metropolis consisted of 797 parochial day officers, 2785 night watch, and upwards of 100 private watchmen: including the Bow-street day and night patrol, there were about 4000 men employed in the district stretching from Brentford-bridge on the west to the river Lea on the east, and from Highgate on the north to Streatham on the south, the City of London being excluded. The management of this large force was of varied and often of conflicting character. The act of parliament which created the new police force (10 Geo. IV. c. 44) placed the control of the whole body in the hands of two commissioners, who devote their whole time to their duties: they are immediately responsible to the home secretary of state. By the 2 & 3 Victoria, c. 47, the metropolitan police district may be extended to any parish or part of a parish situated within 15 miles of Charing Cross, the first act having limited its operation to a distance of twelve miles. The number of men of each rank serving in the metropolitan police force (Parl. Paper, No. 24, Sess. 1849) is as follows:—1 inspecting superintendent, salary 600*l.*; 18 superintendents, of whom 15 have salaries of 250*l.*, and 2 have a higher and 1 a lower salary; 114 inspectors, 88 of whom have 118*l.* 6*s.* a year; 485 sergeants, of whom 474 have 63*l.* 14*s.*; 5513 constables, those of the first class (1272) have 54*l.* 12*s.*; second class (2346) 49*l.* 8*s.*; third class (1163) have 44*l.* 4*s.* The sergeants and constables are allowed clothing, and each married man of these two ranks is allowed 40 pounds' weight of coals weekly throughout the year; each single man is allowed 40 pounds' weight weekly during six winter months, and 20 pounds' weight weekly for the remainder of the year.

The total force in 1846 was 4749; in 1848, 5513. They are formed in divisions, each division being employed in a distinct

district. Every part of the metropolis is divided into "beats," and is watched day and night. The total disbursements on account of the force, for the year 1845, amounted to 230,042*l.*, one-fourth of which is paid by the treasury out of the public revenue, and the other three-fourths by the respective parishes. Since August, 1839, the horse patrol, consisting of 71 mounted men, who are employed within a distance of several miles around London, has been incorporated with the metropolitan police. The Thames police consists of 22 surveyors, each of whom has charge of three men and a boat when on duty: the number of constables is 27. The establishment is under the immediate direction of the magistrates of the Thames Police-office. The city of London still manages its own police affairs, which have been placed under a far more efficient system since the establishment of the metropolitan police force.

The police of the metropolis and the district within fifteen miles of Charing Cross (exclusive of the city of London) is regulated by the Acts 10 Geo. IV. c. 44, and 2 & 3 Vict. c. 47, and together they form the police code for nearly a seventh part of the population of England and Wales.

The officers and men of the metropolitan police have been at various times engaged in other places to protect the peace when the local force has been found incompetent. In nearly all the boroughs constituted under the Municipal Reform Act (5 & 6 Will. IV. c. 76) a paid police force has been established as nearly as possible on the same footing as the metropolitan police. In the metropolis, "when any burglary or serious offence is brought to the knowledge of the police, the superintendent or other officer of the division or subdivision where the offence has occurred immediately examines the circumstances, or makes a precognition and a report upon them and the measures taken in consequence. . . . A daily report or presentment is made to the commissioners of all the chief occurrences which have taken place during the preceding twenty-four hours in every division of nearly two counties, upon which presentment such instructions are given as any special

circumstances may seem to require. Upon other reports, made at such intervals as to comprehend general results, if it shall appear that in any district there has been an influx of depredators, additional strength is directed upon it, or explanations are required if any marked evil appear to continue without abatement." Not only is the metropolitan police active night and day in preventing depredations and suppressing mendicancy, but its attention is directed to giving assistance in case of accidents, reporting nuisances and obstructions, and in keeping a vigilant eye upon the recesses of profligacy and crime. The same services are performed with more or less efficiency in the large towns which have the services of a trained body of men.

The expense of the eleven police courts of the metropolis, for 1845, amounted to 46,765*l.*, the greater part of which (35,329*l.*) was defrayed out of the Consolidated Fund. The salary of one magistrate (Bow-street) was 1200*l.* a year; and each of the others, 22 in number, received 1000*l.* The fees, penalties, and forfeitures received at the different courts amounted to about 8000*l.*

The difficulty of re-organising the rural constabulary has hitherto retarded the general improvement of this force, while the increased vigilance of the towns has rendered such a measure more imperative. In October, 1837, a commission was appointed under the crown "to inquire into the best means of establishing an efficient constabulary force in the counties of England and Wales;" and the commissioners having taken means to ascertain the opinions of the magistracy in each petty-sessional division in the country, it was found that, out of 435 divisions, the magistrates in 123 of them recommended the appointment of a paid rural police; in 13 divisions they recommended such a force, with a proviso that it be placed under their exclusive control; in 77 divisions the appointment of a patrol or of additional constables was recommended; in 16, the better remuneration of the present constables; in 37 divisions it was considered that further security was necessary; and in 122 divisions an opinion was given that no alter-

ation was required. The evils of the present inefficient system are fully described in the Report of the Constabulary Commissioners (No. 169, Session 1839). Some of their recommendations involve questions of provincial organization, which render it very difficult to bring a uniform system of police administration into general operation. In a bill introduced into the House of Commons in 1839, an attempt was made to remove some of these obstacles, and a very clear and detailed account of the plan was printed with the bill (No. 71, Session 1839); but the measure was regarded as too elaborate, and introduced so many innovations as to occasion its ultimate rejection.

The following is a brief summary of the principal reasons which induced the Constabulary Commissioners to recommend the appointment of a paid police force in lieu of the present parish constables:—The want of organization in any existing force has encouraged crime, and each person living by depredations costs much more to the community than a paid constable. Besides the expenses of judicial establishments, a sum exceeding 2,000,000*l.* is paid annually in England for the repression of crime, while the means for the attainment of this object are imperfect and inefficient. Even the money at present contributed by voluntary associations for self-protection would, it is thought, go far towards obtaining an effective combined force; and there would be also the saving of time to several thousand persons now annually forced into almost useless service as constables, or a saving of money which is paid for substitutes. The extent of the force required is estimated at rather more than 8000 men, and the annual cost at a sum below 450,000*l.*, including expenses of management and other charges: the whole cost would not exceed 1½*l.* in the pound on the valuation of real property in England and Wales in 1815; and it is proposed that one-fourth of the annual cost be defrayed out of the consolidated fund, and the other three-fourths out of the county rate. The average number of commitments in England is upwards of 100,000 annually, which number, it is assumed, represents a total of 10,000

persons living wholly by depredation, to which must be added those who live partially by such means and escape detection, to meet which active body a trained force of 8000 men appears to be a moderate estimate. The commissioners recommended that a disposable force of 300 or 400 additional men be kept for extraordinary services. The patronage connected with a paid constabulary should be vested in those who are directly responsible for its efficiency; and local supervision and control might be made consistent with this arrangement. The success of such a force would of course depend to a great extent upon its being seconded by popular feeling, and, contrary to the opinion of many persons, it would be less likely to infringe upon personal liberty than a body of isolated individuals, for an acquaintance with legal duties forms part of the training of a combined force, which must in all cases have general rules for its conduct and government. Should a trained constabulary be established, the commissioners recommended that the men be changed from one district to another in the same manner as the officers of the Excise establishment.

The government has not thought proper to take any steps for the general establishment of a trained constabulary force in England and Wales; but in 1839 an act was passed (2 & 3 Vict. c. 93) which enabled the justices in quarter sessions to appoint county and district constables, and thus left the improvement of the police to their discretion. A report must be previously made to the secretary of state, showing the necessity of appointing additional constables. By 2 & 3 Vict. no more than one constable could be appointed to each one thousand of the population; but by 3 & 4 Vict. c. 88, this limitation is done away with. The expenses of the police force (rural police) are charged upon the county rate in the several divisions in which the force has been appointed. To secure unity of action and general uniformity, the secretary of state is empowered to frame rules for the regulation of the force. The men employed in it are not to exercise any other employment, nor allowed to vote at

elections for a member of parliament. Under the provisions of these acts a rural police force has been appointed in several counties. The act 3 & 4 Vict. c. 88, contains provisions for the consolidation of the borough and county police in cases where the respective authorities desire to enter into such an arrangement.

In addition to the two acts above mentioned, there are other statutes which enable magistrates to obtain any additional police force which may be requisite to ensure the conservation of the peace. [CONSTABLE.]

The Irish constabulary partakes much more of a military character than the London police or the rural police of the English counties. They are stationed in barracks, have fire-arms, and are removed from one part of the country to another. In 1845 the Irish constabulary consisted of 9193 persons, under the command of an inspector-general, who has a salary of 1500*l.* a year. There are a deputy inspector-general with a salary of 1000*l.*, and a second deputy with a salary of 800*l.* There are 2 provincial inspectors, 18 paymasters, 35 county inspectors, 210 sub-inspectors; 260 head constables, 1458 constables, 6368 sub-constables, first class, and 1039 of the second class. Connected with the police system there are 60 stipendiary magistrates, with salaries of from 350*l.* to 1000*l.* a year, besides certain allowances. The total expense of the force in 1845 was 451,577*l.*, of which sum 180,080*l.* was borne by counties, cities, and towns, and 271,497*l.* was charged upon the Consolidated Fund. The prime minister, Sir Robert Peel, in his speech on the general policy of the country on 27th January, 1846, proposed to charge the whole expense of the Irish Constabulary Force upon the public income, partly with a view to the relief of landlords and partly in order that the executive may have a more complete control over the force.

**POLICY and POLITY.** Policy is generally used to signify the line of conduct which the rulers of a nation adopt on particular questions, especially with regard to foreign countries, and according to our opinion of that particular line of conduct we say that it is good or bad



policy. Polity has a more extended sense, being synonymous with the principles of government, and this is the sense of the Greek 'politeia' (πολιτεία), from which it is derived. Police, in an extended sense, is that branch of polity which is concerned with the internal economy of the state. In a more restricted sense it is a branch of preventive administration, distinct from the administration of justice, the object of which, among other things, is the punishment of crimes committed. [POLICE.]

POLICY. [INSURANCE.]

POLITICAL ECONOMY. The word Economy is from the Greek *oeconomía* (οικονομία), "house-management," or "household management," the notion of which is generally understood. It does not signify in the original language merely "saving" or "thrift," but the judicious and profitable management of a man's property; and this is the sense of the word in the treatise of Xenophon entitled *Oeconomicos* (Οικονομικός).

Political Economy or Public Economy should mean a management of a State analogous to the management of a private property. But this is not the sense in which the term is used; and the term itself is objectionable by reason of the false analogy which it suggests. It is however true that many governments have acted on the notion that the supreme power should direct the industry of individuals, and in some degree provide for their wants; and many persons still have an opinion that one of the functions of government is to regulate agriculture, manufactures, and commerce; not to prescribe exactly to every man how he shall employ himself, but to make regulations which shall to a considerable extent direct the industry of the members of the State. Adam Smith gave to his work the title of the 'Wealth of Nations,' a term which indicates much better than the term Political Economy the object of his investigations, which is, "to explain in what has consisted the revenue of the great body of the people, or what has been the nature of those funds which in different ages and nations have supplied their annual consumption." The word Wealth indicates that the inquiry is

mainly conversant about material results, about the products which man by his labour produces for his necessities and his pleasures. The word Nations implies that the object of the inquiry is the aggregate wealth which any political society acquires; but this investigation further implies an examination into the conditions under which the individual members of a state labour for the production of a nation's wealth, and what they get for their labour; for the wealth thus acquired is not the wealth of a nation in the sense in which some things belong to a nation or to the public. The great mass of products are appropriated by individuals in accordance with the rules of property or ownership, that exist in some form or other in all nations, and the terms of contract between capitalists and labourers. All that is produced, except that part which the State produces as a State, or takes for the purposes of the general administration, is appropriated by individuals, and is either saved or consumed. The term Political Economy would have an exact meaning, if we understood it to express that economy or management which the State as a State exercises or should exercise for the benefit of all. It would comprehend all that the State should do for the general interest, and which individuals or associations of individuals cannot do as well; it would thus in a sense coincide with the term Government. Being thus defined, it would exclude all things that a State as a State should not do; and thus the inquiry into the Wealth of Nations would mean an inquiry into all those conditions under which wealth is produced, distributed, accumulated, and consumed or used by all the individuals who compose any given political community. But though the subject of Government is easily separated from the proper subject of Political Economy, everybody perceives that there is some connection between the two things; and this is the foundation of some of the false notions that have prevented Political Economy from attaining the form of an exact science. Everybody perceives that a Government can do much towards increasing or diminishing "the revenue of the great

body of the people;" but everybody does not see what a Government should do or should not do in order that this revenue may be the greatest and most beneficially distributed.

Those who at the present day maintain that agriculture should be protected, or, expressing the proposition in other terms, say that native industry ought to be protected, assume that a Government ought to regulate the manner in which a nation shall acquire its revenue. To be consistent they should go further: a Government should regulate the mode in which the revenue shall be distributed, accumulated, and used. In fact Governments by their acts, and mainly by the weight and kind of their imposts, do this in some degree, though their object may not be to do this. But to protect native industry is to regulate purposely and designedly part of the process by which a nation produces the sum total of that revenue of which all persons, landowners, capitalists and labourers, get some portion. This protection consists in excluding many articles of foreign produce, or laying heavy customs' duties on them, in order that those who produce such articles at home may get a better price for them. Thus he who has to buy the articles must give more for them than he would if there were no protection; and precisely to the amount of this higher price are his means directly diminished for buying anything else that he wants for productive use or simple enjoyment. The indirect consequences of such Government regulations also diminish his own productive powers.

The French Economistes, as they are termed, of whom Quesnay was the head, considered agriculture as the only source of wealth, and had other opinions about agriculture as distinguished from manufactures, which are not well founded; but they did not for that reason maintain that agriculture should have any exclusive protection: on the contrary, they maintained that all taxes should fall on land, and that trade in corn should be freed from the restrictions to which it was then subjected between one province and another in France.

It is not easy to make an exact classification of the subjects which writers on

Political Economy discuss. The matters which they do discuss may be generally enumerated as follows:—The production of wealth and the notion of wealth, which comprehend the subjects of Accumulation, Capital, Demand and Supply, Division of Labour, Machinery, and the like. But all the matter of Political Economy is so connected, that every great division which we may make suggests other divisions. The Profits of Capital and the Wages of Labour, the Rent of Land, and the nature of the Currency, are all involved in the notions of Accumulation, Capital, and so forth. No treatise has perhaps yet appeared which has exhibited the subject of Political Economy in the best form of which it is susceptible.

The way in which "the Revenue of the great body of the people" is distributed, is an inquiry only next in importance to the mode in which it is produced; and the mode and proportions in which it is distributed re-act upon future production. He who receives anything out of the "Revenue" is, by the supposition, a person who has contributed to it, either as a land owner, a capitalist or a labourer. If he is neither a landowner, a capitalist nor a labourer, he is supported out of the public revenue either by alms, or by pensions, or by the bounty of parents or friends. Omitting these cases, a man's title to a part of "the Revenue of the great body of the people," if it is an honest title, is either the title which he has to the produce of land or capital, of which a portion has been appropriated to him in conformity to the rules which establish ownership, or it is the title of one who labours for hire and receives his pay pursuant to the terms of the contract. The owner of land and capital, if he does not employ it himself, lets others have the use of it in consideration of interest or rent or some fixed payment.

The use which a people shall make of their revenue is the last great division of the subject. The analogy here between Economy in its proper sense and the Economy of a People is pretty close. Judicious Economy is the making the best use of one's income; and the best use is to spend it on things of necessity first, on things which gratify the taste and the understanding next, but to put

by something as a reserve against contingencies, and as a means of adding still further to our enjoyments. The savings of individuals constitute the savings of the Nation: there is no saving by the Nation as a Nation; the national accumulation is the sum total of individual accumulations. The savings are made nearly altogether without concert or co-operation. Division of labour and combination of labour, which are in reality the same thing when properly understood, effect saving in production, and consequently they effect saving in consumption so far as they make anything cheaper; but this is not individual saving; it is an addition to the public wealth, by which addition all individuals, or some individuals, get more for their money than they otherwise would, or get the same thing cheaper than they otherwise would. The general revenue is always created by co-operation, in which each man receives his due portion. The use or consumption of any man's portion of "the revenue of the great body of the people" and the degree in which each man co-operates towards producing this revenue, are unconnected. Each man consumes, in the true and literal sense of consumption, by himself and for himself—he produces together with others and for others as well as for himself. It is true that he who consumes merely for consumption's sake does indirectly affect production; and this is the kind of consumption which is handled least completely by political economists, though it is in fact the chief element in the whole science. Malthus, in his 'Principles of Political Economy,' has hinted at this: "Adam Smith has stated that capitals are increased by parsimony, that every frugal man is a public benefactor ('Wealth of Nations,' b. ii. ch. 3), and that the increase of wealth depends upon the balance of produce above consumption (b. iv. ch. 5). That these propositions are true to a great extent is perfectly unquestionable. No considerable and continued increase of wealth could possibly take place without that degree of frugality which occasions annually the conversion of some revenue into capital, and creates a balance of produce above consumption; but it is quite obvious that they are not true to an

indefinite extent, and that the principle of saving, pushed to excess, would destroy the motive to production. If every person was satisfied with the simplest food, the poorest clothing, and the meanest houses, it is certain that no other sort of food, clothing, and lodging would be in existence; and as there would be no adequate motive to the proprietors of land to cultivate well, not only the wealth derived from conveniences and luxuries would be quite at an end, but, if the same division of land continued, the production of food would be prematurely checked, and population would come to a stand long before the soil had been well cultivated. If consumption exceed production, the capital of the country must be diminished, and its wealth must be gradually destroyed, from its want of power to produce; if production be in a great excess above consumption, the motive to accumulate and produce must cease from a want of will to consume. The two extremes are obvious; and it follows that there must be some intermediate point, though the resources of political economy may not be able to ascertain it, whereby, taking into consideration both the power to produce and the will to consume, the encouragement to the increase of wealth is the greatest. The division of landed property presents another obvious instance of the same kind. No person has ever for a moment doubted that the division of such immense tracts of land as were formerly in possession of the great feudal proprietors must be favourable to industry and production. It is equally difficult to doubt that a division of landed property may be carried to such an extent as to destroy all the benefits to be derived from the accumulation of capital and the division of labour, and to occasion the most extended poverty. There is here then a point, as well as in the other instance, though we may not know how to place it, where the division of property is best suited to the actual circumstances of the society, and calculated to give the best stimulus to production and to the increase of wealth and population." (Malthus, Introduction.)

It is only by a close analysis of the

matter which all economical writers agree in considering as belonging to Political Economy, that we arrive at the more exact notion of the objects and limits of the science, or at such objects and limits as may be comprehended within a science. The head which is the last in the list, Consumption, may be either Consumption for the purpose of further production, or Consumption for the sole purpose of enjoyment. This Consumption for the purpose of enjoyment is a kind of consumption which some economical writers have scarcely thought of, though all the rest of the world are thinking of it and labouring for it. This Consumption for enjoyment may to some extent and in some cases coincide with or contribute to further production; but as *such*, as Consumption for enjoyment's purpose, it must not be confounded with any other kind of consumption. The true basis of all those investigations which are included under the name of Political Economy is this: That man desires to enjoy, and that he will labour in order to enjoy. The nature of his enjoyments will vary with the various states of society in which he lives, with his moral, social, and intellectual character. As he labours in order to enjoy, and as one man gives his labour in exchange for another man's labour, it follows that the exchangeable value of every man's labour will ultimately depend on the opinion of him who wishes to have the fruits of such labour.

It therefore concerns all who labour that they understand on what the value of their labour depends. It is not the value of a man's labour to himself which we have to consider here, but the value of it to others. A man may value his own labour as he pleases, but if he wishes to exchange it, he will find that it is other persons who then determine its value: the real value is what he can get for it. This fact is well known to all who produce anything to sell, or offer their labour for hire. The value of anything to him who has not the thing, but wishes to have it, is not measured by the opinion of him who has it to sell. The price of purchase is a result which is compounded of the wants of the buyers and the quantity or supply of the thing which they desire to

have. There is no formula which can accurately express the numerical value of this result; nor would a numerical result be invariable. It depends on the supply of the things which purchasers desire, and also on their necessary wants, taste, and caprice. The wants of the buyers, their real efficient demands, imply ability or means to buy with; and this is a varying element. Thus there are two varying elements of selling price, the demand and the supply. Prices vary least in those things which are the primary necessities, when trade is free from all restrictions; or they are at least not subject to the same variations of taste and caprice. One of the varying causes of price, opinion, is here pretty nearly constant; and the risk of variation is mainly in the supply, which depends on seasons and other accidents. When the value of a thing depends on an opinion that is liable to change, the supply will be less certain on account of the uncertainty of opinion. No man can say with certainty what will be the value of anything at a future time; but long experience has taught men the probable limits within which the selling prices of most articles of common use will vary, and a knowledge of these limits enables them to determine whether they can undertake to furnish the market with any given article so as to have a reasonable security for a profit. Profit is the condition without which things will not continue to be produced for sale. The cost that is expended upon a thing does not determine its value, by which is meant its selling price, but the selling price determines whether the thing will continue to be produced. In the case of many new articles, the production of them is a pure risk, and dear-bought experience alone in many cases teaches a man that he has laboured much to no purpose—that he has something to sell, which nobody wishes to buy. Articles of ordinary consumption are regularly produced, because the efficient demand combined with the quantity in the market secures a remunerating price. If other articles take the place of those which have been in ordinary use, the old articles cease to be made. If the same articles, owing to improved processes, are

produced at less cost, the selling price is diminished, not because the labour bestowed on them is less, but because the supply of such articles is more abundant whenever there is free competition. That the labour expended on an article does not determine its exchangeable value is clear from the case supposed, for if there was no competition among producers, the purchasers would not get the thing a bit the cheaper, simply because it could be produced at less cost. The producer might be wise enough to lower the price, in order to get an increased sale, and an increased total profit; but in fact, the increased amount of production is that which lowers the price, and not the will of the seller. If he increases his production, he must sell or he will lose by his increased production, and he cannot prevent the price from falling, unless the demand increases quicker than his production.

The price of all labour, Wages or Hire, is also determined by the opinion of those who want it and have the means of paying for it, and the amount of the kind of labour that is in the market. The price is sometimes as low as nothing, which means that the thing is not wanted. This is true of all kinds of labour from the labour of him who sweeps the streets to the labour of him who produces the finest work of art or the noblest effort of intellectual power.

The notions that the value of every article produced by labour is determined by the cost of production, and that the price of labour is determined by the wants of the labourer or the prices of other things, are fruitful sources of misery. Every man can cite instances in which these doctrines are palpably false, and no man can cite many instances in which they are really true, though at first sight they may appear to be so. [PRICE.]

If we would investigate the economical condition of a country as to the production of wealth, its distribution, and its consumption, we must ascertain its population, the various kinds of employments, the amount of articles produced, the wages of the labourer, the profits of the capitalist, rate of interest, rent of lands and houses, and the various articles consumed, both articles the produce of the country and articles imported.

of which the articles exported are the equivalents. We must ascertain the rate at which population increases in a given period, the rate at which permanent improvements, such as roads, houses, docks, and the like, increase, and all improvements of a permanent character. In such an investigation the economist may proceed on the supposition that man is acting free from all restraint, except the restraint which compels every man to respect his neighbour's property and person; that every man is labouring just as he pleases without constraint or direction, and that every man is enjoying what he produces or what he gets in exchange for his own production, with no other restraint than the law imposes for the protection of other men's property and persons. But such a state of things does not exist, and perhaps never did; and when the economist has investigated the actual state of a nation's wealth and its consumption, he will have to ascertain how and to what extent men are limited in their industry by positive law, by positive morality, and by anything else. It is his business to detect those artificial restraints which interfere with a man's industry and consequently with his enjoyment. In his inquiries he must never forget that consumption for consumption's sake is the end of all our labour; not such a consumption as shall destroy wealth, but such a consumption as is consistent with permanent and increased means of enjoyment, both for the actual generation and for an increased number in the succeeding generation. He therefore recognises saving, accumulation, and productive consumption as necessary means towards the end of increased enjoyment. But he acknowledges no real enjoyment, he does not admit that there is happiness, and he denies the possibility of improvement of the social condition of a people, unless the necessities of life, such as the country and climate require, are possessed by all—food, raiment, and lodging. When these things can be had, and not before, a man has leisure and inclination to supply other wants that lie dormant while he is hungry, naked, and without shelter against the weather.

It will be discovered that there are

peculiar circumstances in most countries that affect the happiness of the people in different ways. It is the business of the economist to investigate these circumstances and to ascertain them, whether the circumstances may be the peculiar form of the government, the habits of the people, their ignorance, or any other cause. His problem is to trace to their causes all those conditions which interfere with the enjoyment of the necessities of life, without a supply of which no man can be happy. Whatever he can prove to interfere with such a supply, to diminish such a supply, to make it less than it otherwise would be, is within the province of his investigation; whether it is arbitrary power in a monarch, ignorance in a constitutional government, heavy taxation, restrictions upon the free exercise of industry, or anything else, by whatever name it is called, that interferes with a man's industry, and consequently with his enjoyment. If he carries his inquiries beyond those necessities of life which all men want before they ask for anything else, he will find ample employment in investigating the causes which interfere with or limit the class of secondary enjoyments, those which a man craves for when he has satisfied the first. He will discover that the same kind of restraint or interference often limits the secondary enjoyments, and that their being limited operates upon the primary wants, and so limits the means of gratifying them also. He will thus approach the solution of a great question, and endeavour to determine whether the sovereign power should interfere with industry in any way, except to raise money by taxation for the necessary expenses of the administration; and he will endeavour to determine how the required amount of money may be raised so as to curtail each man's enjoyments in the least possible degree.

If the question of freedom from all restraint on industry, except such restraints as have been alluded to, is determined in favour of freedom, there will still be plenty for the economist to do. The greatest enemy to man is his own ignorance. The mode in which men shall so organize their labour that each

shall get more out of the common stock by such organization than by any other mode, is the great question that concerns us all. Knowledge must guide our industry, or it may be fruitless, even though it has perfect liberty of action. Enjoyment is the end to which knowledge alone can lead us. Enjoyment implies the sufficient and reasonable satisfaction of the appetites, which must precede the enjoyment of the imagination and the intellectual faculties; the harmonious combination of the two enjoyments makes Happiness.

The field for the Political Economist is as extensive as Society itself; but his labour has certain limits. He may often determine when legislation is unwise, or when it is wanted: but he does not concern himself about the making of the law. He is satisfied if a bad law is repealed, or if, when useful, it is so framed as to accomplish the object. Nor does he concern himself about forms of Polity, or systems of religion or morals, or philosophy as *such*. But he does investigate the mode in which they operate upon industry directly or indirectly and mainly their mode of operation on the primary wants, those wants which all men seek to satisfy, and which all must in some degree satisfy, or they must cease to live. The great test, the unerring test, of the condition of a nation, is the condition of those who labour for their daily bread. If these have sufficient, it is a certain deduction that others have more than sufficient, and that there may be improvement in the social and moral condition of all classes. But ignorance may prevent improvement. It will, therefore, be the province of the economist to show how, when the primary wants of a people are satisfied, they may secure, so far as it can be secured, so happy a condition, and also to show by what combinations the gratification of the secondary wants may be secured with the least trouble and expense. The fundamental principles of the economist are indeed, as it has been often remarked, very few; and it is equally true that very little can be deduced from them. They must be constantly applied, in the way of test and correction, and the matter to which they

must be applied is the experience of man. A wise man neither rejects nor over-values the axioms of his science; but when his subject is "immersed in matters," to use an expression of Bacon, he knows better than to expect a few axioms, even if absolutely true, to solve problems to the whole or parts of which they will often not apply.

The Literature of Political Economy is very copious. Much that has been written is of little value for practice, but curious and useful as a history of opinion. An outline of this part of the subject is given in the 'Penny Cyclopædia,' under the title "Political Economy;" and in 1845 Mr. McCulloch published a useful work entitled 'The Literature of Political Economy.' It is a classified catalogue of the principal works in the different departments of Political Economy, and is interspersed with historical, critical, and biographical notices.

A few years ago a Professorship of Political Economy was founded in the University of Oxford, by Mr. Drummond. Archbishop Whately has founded a similar professorship in the University of Dublin. There are unendowed professorships in the University of Cambridge, and in University College and King's College, London; but that of University College, London, has not been filled for several years.

POLYGAMY is the name of the custom according to which a man may have more than one lawful wife at a time, which custom prevails in several countries. Polygamy has existed in Asia from time immemorial, and Mohammedanism adopted and confirmed the custom. Montesquieu pretends that polygamy in the East is the consequence of the greater number of female births in that country: but this surmise is by no means proved. Another and a more plausible reason may be found in the premature old age of the female sex in some countries. Niebuhr, in his 'Travels in Arabia,' gives a curious conversation which he had with an Arab on the subject of polygamy. (*Reisebeschreibung*, ii. 253.)

Neither Greek nor Roman usage allowed a man to have more than one wife at a time. But divorce became so

common among the Romans, that the frequent change of wife became almost a practical polygamy. However, this practice of divorce was probably confined to the rich and luxurious, who, when they have no regular occupation, are generally the most licentious members of society. The barbarous nations, on the contrary, that is to say, those who were not Greeks or Romans, practised polygamy, with the exception of the Germans, "who alone," says Tacitus, "among all the barbarians, are content with a single wife." (*German.*, 17.)

In the scriptures we find instances of polygamy recorded before the flood. (*Genesis*, iv. 19.) It was common in the patriarchal times, and we have the instance of Jacob marrying two sisters. By the law of Moses it appears to have been tolerated. (*Exodus*, xxi. 9, 10, and *Deuteronomy*, xxi. 15.) But in the time of our Saviour, no indication appears of its being common among the Jews. Divorce, however, was frequent, and our Saviour (*Matthæw*, xix. 9) reprobates the custom. St. Paul speaks always of marriage in terms implying the union of one man with one woman. In Christian countries, polygamy has been long since universally forbidden, both by the church and by the civil law, under severe penalties, which in some countries amounted to death. In England, it is a punishable offence. [BIGAMY.]

The Koran allows a man to have four legitimate wives; but it is only the rich who avail themselves of this permission. The Arabs are generally content with one wife.

Polygamy can never prevail much in any country where slavery does not exist in some form, even if the practice is permitted. The expense of two or more wives is a sufficient check on the practice. It is only the rich who can indulge in this way. A poor man in any country will find one wife and one set of children quite enough for him. If in England, for instance, it was permitted for a man to have several wives at once, all of whom should be in the legal condition of a wife, the expense alone would prevent any prudent man from availing himself of the legal permission.

if there were no other objection. When the wife is a kind of slave to her husband and assists to support him by her labour, a plurality of wives is merely an increasing of a man's slaves with the increased power of sexual intercourse at the same time. That such a mode of life must be a brutalized and a half savage state, is obvious enough; and it is not consistent with any improvement in the condition of women; and on the improved condition of women mainly depends the improveable condition of society. If in any country polygamy were carried to a great extent among the rich, the consequence would be that the poor must go without wives, unless the demands of the rich were supplied by importation of female slaves, which is the case in some countries.

That union which exists in the cohabitation of a man with one woman makes a family quite a different thing from a family which is founded on the cohabitation of a man with more than one woman. Traced out to all their consequences, the two practices produce distinct social systems, which, in nearly every respect, are right opposed to one another. The advantage is on the side of monogamy, though the nations which maintain polygamy might easily discover some weak points in the monogamist practice.

POOR. [POOR LAWS AND PAUPERISM.]

POOR LAWS AND PAUPERISM.

A pauper in England is a person who, unable to support himself, receives money or money's worth from the contributions of those who are by law compelled to maintain him wholly or in part. There are many poor persons who are not paupers. He who gets his living by his labour, but receives no legal relief, is not a pauper. He who will not or does not work, but gets his living by begging, is a mendicant. Those who are supported wholly or in part by the voluntary gifts of charitable persons are not paupers.

The causes of pauperism are numerous, and it would be equivalent to an attempt to explain most of the phenomena of modern society, if we should attempt to assign all its possible or even all its actual causes in any given country. Some of the

causes however are clearly traceable to positive law. Every history of positive legislation in this and other countries shows that those who have had the power to make laws have not only ignorantly and unintentionally injured society by not perceiving the tendency of their own enactments, but have often purposely and designedly attempted to accomplish objects which they believed to be beneficial to society, but which an enlarged experience and a sound philosophy have proved to be detrimental to the general interest. When the object has been a good one, a legislator has often failed in accomplishing it, owing to ignorance of the proper means. In England legal interference with the condition of the poor has in some degree been exercised for nearly 500 years. In no country have greater efforts been made to regulate their condition, nor greater mistakes committed in this branch of government.

The great object of the earlier efforts in pauper legislation was the restraint of vagrancy. The 12th Richard II. c. 7 (1388) prohibits any labourer from quitting his dwelling-place without a testimonial from a justice of the peace, showing reasonable cause for his going, and without such a testimonial any such wanderer might be apprehended and put in the stocks. Impotent persons were to remain in the towns where they were dwelling at the passing of the act, provided the inhabitants would support them; otherwise they were to go to the places of their birth, to be there supported. By acts passed in the 11 and 19 of Henry VII. (1495 and 1504) impotent beggars were required to go to the hundred where they had last dwelt for three years, or where they were born, and were forbidden to beg elsewhere. By the act 22 Henry VIII. c. 12 (1531), justices were directed to assign to impotent poor persons a district within which they might beg, and beyond which they were forbidden to beg, under pain of being imprisoned and kept in the stocks on bread and water. Able-bodied beggars were to be whipped and forced to return to their place of birth, or where they had last lived for three years.

These acts appear to have had no per-



manent effect in repressing vagrancy. An act passed in 1536 (27 Henry VIII. c. 25) is the first by which voluntary charity was converted into compulsory payment. It enacts that the head officers of every parish to which the impotent or able-bodied poor may resort under the provisions of the act of 1531, shall receive and keep them, so that none shall be compelled to beg openly. The able-bodied were to be kept to constant labour, and every parish making default was to forfeit twenty shillings a month. The money required for the support of the poor was to be collected partly by the head officers of corporate towns and the churchwardens of parishes, and partly was to be derived from collections in the churches and on various occasions where the clergy had opportunities for exhorting the people to charity. Almsgiving beyond the town or parish was prohibited, on forfeiture of ten times the amount given. A "sturdy beggar" was to be whipped the first time he was detected in begging; to have his right ear cropped for the second offence; and if again guilty of begging, was to be indicted "for wandering, loitering, and idleness," and if convicted was "to suffer execution of death as a felon and an enemy of the commonwealth." The severity of this act prevented its execution, and it was repealed by 1 Edward VI. c. 3 (1547). Under this statute every able-bodied person who should not apply himself to some honest labour, or offer to serve for even meat and drink, was to be taken for a vagabond, branded on the shoulder, and adjudged a slave for two years to any one who should demand him, to be fed on bread and water and refuse meat, and made to work by being beaten, chained, or otherwise treated. If he ran away during the two years, he was to be branded on the cheek, and adjudged a slave for life, and if he ran away again, he was to suffer death as a felon. If not demanded as a slave, he was to be kept to hard labour on the highways in chains. The impotent poor were to be passed to their place of birth or settlement, from the hands of one parish constable to those of another. The statute was repealed three years after, and that of 1531 was

revived. In 1551 an act was passed which directed that a book should be kept in every parish, containing the names of the householders and of the impotent poor; that collectors of alms should be appointed who should "gently ask every man and woman what they of their charity will give weekly to the relief of the poor." If any one able to give should refuse or discourage others from giving, the ministers and churchwardens were to exhort him, and, failing of success, the bishop was to admonish him on the subject. This act, and another made to enforce it, which was passed in 1555, were wholly ineffectual, and in 1563 it was re-enacted (5 Eliz. c. 3), with the addition that any person able to contribute and refusing should be cited by the bishop to appear at the next sessions before the justices, where, if he would not be persuaded to give, the justices were to tax him according to their discretion, and on his refusal he was to be committed to gaol until the sum taxed should be paid, with all arrears.

The next statute on the subject, which was passed in 1572 (14 Eliz. c. 5), shows how ineffectual the former statutes had been. It enacted that all rogues, vagabonds, and sturdy beggars, including in this description "all persons whole and mighty in body, able to labour, not having land or master, nor using any lawful merchandise, craft, or mystery, and all common labourers, able in body, loitering and refusing to work for such reasonable wage as is commonly given," should "for the first offence be grievously whipped, and burned through the gristle of the right ear with a hot iron of the compass of an inch about;" for the second, should be deemed felons; and for the third, should suffer death as felons, without benefit of clergy. For the relief and sustentation of the aged and impotent poor, the justices of the peace within their several districts were "by their good discretion" to tax and assess all the inhabitants dwelling therein. Any one refusing to contribute was to be imprisoned until he should comply with the assessment. By the statutes 39 of Elizabeth, c. 3 and 4 (1598), every able-bodied person refusing to work for the ordinary wages

was to be "openly whipped until his body be bloody, and forthwith sent, from parish to parish, the most strait way to the parish where he was born, there to put himself to labour as a true subject ought to do."

The next act on this subject, the 43 Elizabeth, c. 2, has been in operation from the time of its enactment, in 1601, to the present day. A change in the mode of administration was however effected by the Poor Law Amendment Act (4 & 5 Wm. IV. c. 76), which was passed in 1834. During that long period many abuses crept into the administration of the laws relating to the poor, so that in practice their operation impaired the character of the most numerous class, and was injurious to the whole country. In its original provisions the act of Elizabeth directed the overseers of the poor in every parish to "take order for setting to work the children of all such parents as shall not be thought able to maintain their children," as well as all such persons as, having no means to maintain them, use no ordinary trade to get their living by. For this purpose they were empowered "to raise, weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, mines, &c., such sums of money as they shall require for providing a sufficient stock of flax, hemp, wool, and other ware or stuff, to set the poor on work, and also competent sums for relief of lame, blind, old, and impotent persons, and for putting out children as apprentices." Power was given to justices to send to the house of correction or common gaol all persons who would not work. The churchwardens and overseers were further empowered to build poorhouses, at the charge of the parish, for the reception of the impotent poor only. The justices were further empowered to assess all persons of sufficient ability, for the relief and maintenance of their children, grandchildren, and parents. The parish officers were also empowered to bind as apprentices any children who should be chargeable to the parish.

These simple provisions were in course of time greatly perverted, and many

abuses were introduced into the administration of the law. The most mischievous practice was that which was established by the Justices for the county of Berks in the month of May, 1795, when, in order to meet the wants of the labouring population caused by the high price of provisions, an allowance in proportion to the number of his family was made out of the parish fund to every labourer who applied for relief. This allowance fluctuated with the price of the gallon loaf of second flour, and the scale was so adjusted as to return to each family the sum which a given number of loaves would cost beyond the price in years of ordinary abundance. This plan was conceived in a spirit of benevolence, but the readiness with which it was adopted in all parts of England clearly shows the general want of sound views on the subject. Under the allowance system the labourer received a part of his means of subsistence in the form of a parish gift, and as the fund out of which it was provided was raised from the contributions of those who did not employ labourers, as well as of those who did, their employers, being able in part to burthen others with the payment for their labour, had a direct interest in perpetuating the system. Those who employed labourers looked upon the parish contribution as part of the fund out of which they were to be paid, and accordingly they lowered their rate of wages. The labourers also looked on the parish fund as a source of wages, independent of their labour wages. The consequence was that the labourer looked to the parish aid as a matter of right, without any regard to his real wants, and he received the wages of his labour as only one and a secondary source of the means of subsistence. His character as a labourer became of less value, and his value as a labourer was thus diminished under the combined operation of these two causes. In 1832 a commission was appointed by the crown, under whose direction inquiries were made through England and Wales, and the actual condition of the labouring class in every parish was ascertained with the view of showing the evils of the existing practice, and of suggesting some remedy. The labour of

this inquiry was great, but in a short time a Report was presented by the commissioners, which explained the operation of the law as administered, with its effects upon different classes, and suggested remedial measures. This Report was presented in February, 1834, and was followed by the passing, in August, 1834, of the Poor Law Amendment Act, 4 & 5 Wm. IV. c. 76, in which the principal recommendations of the commissioners were embodied. This Act was amended by the 7 & 8 Vict. c. 101 (9th August, 1844).

The chief provisions of this law are—the appointment of a central board of three commissioners, whose quarters were in Somerset House, London, for the general superintendence and control of all bodies charged with the management of funds for the relief of the poor. There were nine assistant-commissioners, each one of whom had a district; assistant-commissioners had to visit their districts and see that the orders of the commissioners were executed. The assistant poor-law commissioners were appointed by and removable by the commissioners. The whole administration of the Poor Law is under the direction of the secretary of state for the home department. The administration of relief to the poor was under the control of the commissioners, who made rules and regulations for the purpose, which were binding upon all the local bodies. They were empowered to order workhouses to be built, hired, altered, or enlarged, with the consent of the majority of a board of guardians. They had the power of uniting several parishes for the purposes of a more effective and economical administration of poor relief, but so that the actual charge in respect to its own poor be defrayed by each parish. These united parishes, or Unions, are managed by boards of guardians annually elected by the rate-payers of the various parishes, but the masters of workhouses and other paid officers are under the orders of the commissioners, and removable by them. The system of paying wages partly out of poor-rates is discontinued, and except in extraordinary cases, as to which the commissioners are the judges, relief is only to be given to able-bodied persons or to their families within the walls of the

workhouse. Another branch of the poor-law, which was materially altered by the act of 1834, was that relating to illegitimate children, which is explained under BASTARDY.

The 7 & 8 Vict. c. 101, § 12, empowers the poor-law commissioners to prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions of the indentures of apprenticeship: and no poor children are in future to be apprenticed by the overseers of any parish included in any union or subject to a board of guardians under the provisions of the 4 & 5 Wm. IV. c. 76, but it is declared to be lawful for the guardians of such union or parish to bind poor children apprentices. The 13th section abolishes so much of the 43 Eliz. c. 2, and of the 8 & 9 Wm. III. c. 3, and of all other acts, as compels any person to receive any poor child as an apprentice. The 14th and following sections make some new regulations as to the number of votes of owners of property and rate payers in the election of guardians, and in other cases when the consent of the owners and rate-payers is required for any of the purposes of the 4 & 5 Wm. IV. c. 76. The 18th section empowers the commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the Act 4 & 5 Wm. IV. c. 76. Section 18 empowers the commissioners to divide parishes which have more than 20,000 inhabitants according to the census then last published, into wards for the purpose of the election of guardians, and to determine the number of guardians to be elected for each ward. The 25th section provides that so long as any woman's husband is beyond seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman or to her child or children shall be given in the same manner and subject to the same conditions as if she was a widow, but the obligation or liability of the husband in respect of such relief continues as before. The 26th section empowers the guardians of a parish or union to give relief to widows,

under certain conditions, who at the time of their husband's death were resident with them in some place other than the parish of their legal settlement, and not situated in any union in which such parish is comprised.

The 31st section makes some provision as to the burial of paupers.

The 32nd section provides that the commissioners may combine parishes and unions in England for the audit of accounts. By the 40th section the commissioners may, subject to certain restrictions there mentioned, combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, or who are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district. By the 41st section the commissioners are empowered to declare parishes or unions or parishes and unions within the district of the metropolitan police or the city of London, or of the city, towns, and boroughs mentioned in the schedule B annexed to the act, to be combined into districts for the purpose of founding and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence and who may apply for relief or become chargeable to the poor's rates within any such parish or union.

The 58th section provides for the punishment of persons who are guilty of misconduct in workhouses.

The other provisions of the Act are chiefly framed for the purpose of carrying into effect the general objects already described.

One important consequence which has resulted from the better management of the poor, and which is calculated to produce an important effect on their future condition, is the adoption of plans for the education of children resident in workhouses. Under the administration of the unamended law little or nothing was done towards this object, and in almost every case the child whose misfortune it was to

be brought up at the charge of the parish, continued through life dependent upon others for subsistence, and often followed a course of systematic dishonesty. The system of moral, intellectual, and industrial training which has been to some extent engrafted upon the administration of the amended law, is calculated to bring up the children of the workhouse to be useful members of society.

It will now be convenient to state how the law stood previously to the passing of the Act 4 & 5 Wm. IV. c. 76, as to relief to the poor and settlement, and then to notice some of its leading provisions.

Every indigent person, whether a native or a foreigner, being in any district of England or Wales, in which a fund is raised for the maintenance of the poor, has a right to be supplied with the necessities of life out of that fund. This right depends on statute, and principally on the 43 Eliz. c. 2, which enacts that the churchwardens of every parish, and four, three, or two substantial householders there, to be nominated yearly under the hands and seals of two or more justices of the peace, shall be called overseers of the poor. [OVERSEERS.] Under this statute overseers could be appointed for parishes only. This proved very insufficient, because many large and populous districts were not situate within any parish, and consequently no overseers whatever could be appointed for them, and also because many parishes themselves were of such magnitude that one set of overseers could not properly attend to all the poor. To supply this defect, the 13 & 14 Car. II. c. 12, authorised the appointment of overseers in any township that was either extra-parochial or was part of a parish so large as to require distinct sets of officers for the management of its poor. Townships are sometimes created also by local acts.

It is the duty of these overseers to raise and administer the fund for the relief of the poor of their district. This fund, which is called the poor-rate, they are directed by the statute of Elizabeth in parishes, and by the statute of Car. II. in townships, to raise "weekly or otherwise, by taxation of every in-

habitant, parson, vicar, and other, and every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit, &c. according to the ability of the parish."

These provisions are still however, even since the 4 & 5 Wm. IV. c. 76, very inadequate. Overseers cannot be appointed nor can a poor-rate be levied in any place that was not anciently either a parish or a township. Many districts at the present day form no part of any parish or township; and the poor of such districts, if unable to remove themselves to a parochial division of the country, where they will be entitled to relief as casual poor, may, as far as the law is concerned, perish from want.

The rate may be made according to the exigencies of the place, which, whether parish or township, may conveniently in either case be called a parish, for any period not less than a week nor exceeding a year. The rate, which is made in writing, gives the names of the persons rated, a description of the property for which they are rated, and the amount payable by them; it contains also a declaration, signed by the parish officers, that the rate is, to the best of their belief, correct, and that they have used their best endeavours to make it so. The rate so made and signed must be taken to two justices for their assent, which is called the allowance of the rate, and notice of such allowance must be affixed on the church doors (1 Vict. c. 45) on the Sunday following, or the rate will be entire void. This notice is called the publication of the rate.

As the statute expressly mentions both inhabitants and occupiers, inhabitants were held liable to be rated in proportion to their ability within the parish, although they had no property there which was capable of occupation, and occupiers of property therein were held liable although they resided elsewhere. Accordingly both real corporeal property and personal property within the parish may be assessed, as constituting "the ability of the parish;" real corporeal property, as land or houses, may be assessed, where-

soever the occupier resides, and personal property, if the owner is resident within the parish. Incorporeal real property, since it is not the subject of occupation, seems not to be rateable unless incidentally, when, as in the case of the tolls of a canal, it is, as it were, annexed to and enhances the value of corporeal real property, which is the subject of occupation. As it is the occupier and not the owner of real corporeal property who is rated for it, it will be obvious that the term "real property" is not used in the poor-laws according to its strict legal sense, and that the occupier of a house is rated for it, although he has a mere chattel interest in it. The term "personal property" is also used in a restricted sense; it denotes stock in trade, and such things as are not at all of the nature of reality, and excludes chattels real. The assessment is laid in respect of the revenue or annual profit of the property rated, whether real or personal. Such property therefore as is incapable of yielding profit is not rateable. The assessment upon land and houses, &c. is calculated upon an estimate of their net annual value, which is defined to be the rent at which they would let from year to year, free of all tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting the probable average of annual costs of repairs, insurance, and any other expenses which may be necessary to maintain the premises in a state to command such rent. Personal property was not rated unless it had, as it were, a local existence; and therefore neither stock in the funds nor money was rateable. Furniture also was exempted, because it yielded no profit. In practice the only kind of personal property ever rated, and that in very few places, was stock in trade and ships. The rating of this species of property was attended with many disadvantages. The rate was to be made on the profit, which was defined to be not the whole profit, but the excess after payment of debts. Thus it was nearly impossible to ascertain the rateable amount of such property, and the proprietor might always evade the tax by residing out of the parish. So long however as per-

sonal property was rateable by law, the omission of it in the rate was a ground of appeal, because all persons liable are to be rated equally according to their ability. . The inconvenience attending this state of things induced the legislature (by the 3 & 4 Vict. c. 83) to suspend the enactments which authorised the rating of inhabitants in respect of stock in trade, and by subsequent acts to continue the exemption from the liability to be rated in respect of such property until the 1st October, 1846.

It is unnecessary to make any detailed remarks on tithes and other property which, by the statute of Elizabeth, are expressly made chargeable.

If a parish is unable to furnish a sufficient sum for the maintenance of its poor, any other parish in the same hundred, with the sanction of two justices, or in any other part of the county, with the sanction of the justices at quarter-sessions, may be called upon to assist the less solvent parish. This is called rating parishes in aid.

The overseers are to collect the rate from the persons rated. If a person rated do not pay when called upon, the overseers may obtain a summons from two justices, requiring him to show cause why a warrant should not issue to levy the rate by distress and sale of his goods; and if no sufficient cause is shown, the payment is enforced accordingly. The party so summoned may show for cause that the rate itself is void, or that he is not liable; he may also, with the consent of the overseers, or Board of Guardians, be excused, if it appear that he is unable to pay through poverty. He may also appeal against the rate, and notice of appeal deprives the magistrates of their jurisdiction to distrain until the appeal is decided, unless the objection is solely on the ground of overcharge, in which case the warrant may issue for such a sum as the property was rated at in the last valid rate. The appeal against the rate on the ground of inequality, unfairness, or incorrectness in the valuation of the property rated, may be to justices at petty-sessions, from whose decision a second appeal lies to the general quarter-sessions. The appeal, on the above

grounds, may also be taken to the quarter-sessions in the first instance. If the objection be to the principle of the rate itself, or it is intended to dispute the liability of the property to be rated, the appeal lies to the quarter-sessions only. In all these cases of appeal, notice of appeal and of the precise objections to the rate must be given to the parish-officers, and also to any rated inhabitants that may be interested in opposing the appellant, as, for instance, where his ground of complaint is that they have been underrated.

The overseers, who in some parishes act under the direction of a select vestry, and are assisted by assistant overseers, are to apply the poor-rate to the relief of the poor of their parish. The poor of the parish are, in one sense, all those who happen to be in the parish at the time of their being in distress; for the parish in which they happen to be is bound to afford such paupers immediate, or, as it is called, casual relief. But if the same parish were bound also to afford continued relief to, or permanently to maintain, all the destitute who should come within it, the burden of supporting the poor might press very unequally upon different parishes. Paupers would then, influenced by their own fancy, or instigated to exonerate some other parish, have the power of fastening themselves for ever on any particular parish, or of roaming at pleasure from one parish to another in unrestricted vagrancy. The 13 & 14 Car. II. c. 12, was passed to obviate these evils, and is the foundation of the present law which determines the parish that a pauper belongs to, and gives the power of removing him to it. This law is called the law of Settlement. The statute enables two justices, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of the peace, within forty days after a person coming to settle there, in any tenement under the yearly value of 10*l.*, by their warrant to remove such person to the parish where he was "last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least." Later statutes have

greatly modified the heads of the settlement here enumerated, and have added others; they have also made a pauper irremovable, until he has become chargeable to the foreign parish by receiving relief from it, either in person or through the hands of his wife or children.

The following are the settlements that subsisted at the passing of the Poor-Law Amendment Act:—settlement by birth, parentage, marriage, hiring and service, apprenticeship, renting a tenement, estate, office, payment of rates. Settlements may be divided into two general classes; being, first, natural or derivative settlements, as by birth, parentage, or marriage, to the perfection of which residence in the parish is unnecessary; secondly, acquired settlements, including all the remaining settlements above mentioned, and to these residence for forty days in the parish is necessary. The following were the modes of acquiring the various settlements which have been enumerated:—1. Settlement by birth.—In order that children may not be separated from their parents, the settlement of the father during his life, and the settlement of the mother after his death, is the settlement of the children. But legitimate children who have no known settlement are settled in the place of their birth; so also are illegitimate children, for they can derive neither settlement nor any thing else from their parents. Children however, during the age of nurture, which continues till they are seven years of age, must not be separated from their parents, and are therefore to be supported in the parish where their parents happen to be, at the expense of the parish of their birth settlement. 2. Settlement by parentage.—The settlement of the father, or, if he have none, the maiden settlement of the mother, is communicated to legitimate unemancipated children. After their father's death their settlement shifts with that of the widow, until she marry again, in which case the settlement of her new husband is not communicated to them. A child is said to be unemancipated so long as he forms part of the parents' family. A child is emancipated when he gains a settlement of his own, or,

being of the age of twenty-one, lives apart from and independently of the parent, or contracts some relation inconsistent with his continuing a subordinate member of the parent's family, as by marrying or enlisting as a soldier. Any settlement of the parent acquired after the child's emancipation is not communicated to him. 3. Settlement by marriage.—To prevent the separation of husband and wife, the settlement of the husband is communicated to the wife; she can acquire no settlement during marriage; and if he have no settlement, she cannot be separated from him by her removal to her maiden settlement. 4. Settlement by hiring and service is acquired by a person unmarried, and without unemancipated children, hiring himself for a year into service, abiding for a year in the same service, and residing for forty days in any parish within the year, and with a view to the service. A general hiring, that is, a hiring where nothing is said as to the duration of the contract, is considered a hiring for a year. The service for a year need not be wholly under the hiring for a year, it is sufficient if part of the service be under such hiring; the residue may be either under another hiring, or under no hiring at all. The settlement is gained in the parish where the servant last *completes* the residence of forty days—the forty days need not be consecutive days; if a servant reside thirty-nine days in parish A, then forty days in parish B, and finally another day in A, where he last completed a residence of forty days, will be the place of his settlement. All the forty days must be within the compass of a single year, but it is sufficient if the residence for any part of the forty days be under the yearly hiring. 5. Settlement by apprenticeship is gained in the parish where a person bound by deed as an apprentice last completes a residence of forty days in his character of apprentice. No service is required, but the apprentice during the necessary period of residence must be under his master's control. 6. Settlement by renting a tenement is acquired by hiring and actually occupying a tenement at the rent of at least 10*l.* a year, payment of

rent to that amount, and residence for forty days in the parish where the tenement is. By actual occupation is meant that no part of the tenement must be underlet. 7. Settlement by estate is gained by the possession of any freehold, copyhold, or leasehold property, and residence for forty days in the parish where the estate lies. If the estate come to a party in any way except by purchase, the value of the estate is immaterial; but a purchased estate confers no settlement if the price given was under 30*l*. But a person residing on his estate, whatever may be its value, is by *Magna Charta* irremovable from it while so residing, although he may have gained no settlement in respect of it. 8. Settlement by office is gained by executing any public office in the parish, such as the office of constable, sexton, &c. for a year, and residing there forty days. The office need not be of a parochial nature, but it must be at least an annual office. 9. Settlement by payment of rates. In order to acquire this settlement a person must have been rated to and have paid the public taxes of a parish, in respect of a tenement hired at a rent of 10*l*. a year, and have paid that amount of rent, and resided forty days in the parish of the tenement. This head of settlement therefore includes all the requisites of settlement by renting a tenement, except the requisite of actual occupation.

All persons whatsoever, whether natural born subjects of England and Wales, Scotchmen, Irishmen, or foreigners, may gain a settlement in this country. A chargeable pauper is to be removed to the place where he last acquired a settlement. It is often very difficult to find out the place of such last settlement; this is so more especially in cases of settlement by hiring and service and apprenticeship, where the residence, being unconnected with anything of a fixed nature, as a tenement or office in any particular parish, may be continually shifting, the settlement consequently shifting with it, until the last day of the service or apprenticeship. Paupers who have no settlement must be maintained by the parish in which they happen to be, as casual poor, unless they

were born in Scotland or Ireland, or in the islands of Man, Jersey, or Guernsey, in which case they are to be taken under a pass-warrant of two justices to their own country. When a pauper has become chargeable, and it is sought to remove him, he is taken before two justices, who inquire as to his place of settlement, and, if satisfied, upon his examination and such other evidence as may be laid before them, make an order for his removal thither. The parish to which he is removed may dispute its liability by appeal to the quarter-sessions, when the order of removal will be quashed, unless it appear that the pauper is settled in the appellant parish.

The Poor-Law Amendment Act (4 & 5 Wm. IV. c. 76) has made no change in the law respecting the rateability of property or the mode of collecting the rate. The Act does not apply itself to the rate until collected; it then takes up the rate for the purpose of securing a better distribution of it. To this end the administration of relief to the poor throughout England and Wales is subject to the control of the three poor-law commissioners. In parishes or unions where there are guardians or a select vestry, relief is to be given solely by such guardians or vestry, or by their order, unless in cases of urgent distress. In these cases an overseer is bound to give temporary relief in articles of absolute necessity, but not in money, and, if he refuse, he may be required to do so by a magistrate's order, disobedience to which is visited by a penalty of 5*l*. In parishes which have no guardians or select vestry, the management and relief of the poor is still left to overseers, subject to the control of the commissioners. But, with the exceptions above stated, the task of relieving the poor is wholly withdrawn from overseers, these officers, from ignorance or corrupt motives, having been generally found incompetent to the discharge of so important a duty. They are still however intrusted with the making and collection of the poor-rate, which they are to pay over to those who have the distribution of it. The general discretionary power which magistrates formerly exercised in ordering relief is also withdrawn. But a single magistrate may still order medical relief,



when called for by sudden and dangerous illness; and two magistrates may order relief to adult persons who from age or infirmity are unable to work, without requiring them to reside in the workhouse. Relief to able-bodied persons cannot be given out of the workhouse, unless with the sanction of the commissioners. In substance, the wants of the poor are as amply supplied as before the Act, but the manner of administering relief is so regulated, by subjecting the applicants for it to the discipline of a workhouse and to other restraints, that the condition of a pauper, living upon the parish fund, is depressed, in point of comfort, below that of the labourer. Thus a ready test is applied to distinguish real and pretended destitution, and a powerful incentive to work is held out to all who can find employment.

The means also of obtaining employment are increased by enlarging the market for the poor man's labour. This is the result of a relaxation in the law of settlement, and particularly of settlement by hiring and service. The old law had been found to obstruct the free circulation of labour by confining the poor to their own parishes. The labourer himself, from attachment to old scenes and associates, was often unwilling to engage himself for a year in a strange parish, lest, by acquiring a settlement there, he should incur, at some future time, a permanent separation from home: the farmer, on the other hand, had an equally strong objection to hire a strange labourer on such terms as to burden his parish with a new settler.

By the Poor-Law Amendment Act a settlement by hiring and service cannot be acquired for the future; but the Act does not interfere materially with settlements previously acquired. Settlements by office and by apprenticeship in the sea service or to a fisherman can no longer be acquired. Settlement by renting a tenement is clogged with the additional qualification that the occupier must have been assessed to the poor-rate, and paid the same for one year. Settlement by estate, like any other settlement, when once gained, used to endure till it was superseded by some new settlement; but now

it is converted to a temporary settlement, and to be retained so long only as the proprietor shall live within ten miles of the estate. Settlements by marriage and by payment of rates are untouched.

Settlement by parentage and settlement by birth are both affected to this extent, that illegitimate children born after the passing of the Act are to follow the settlement of their mother, until the age of sixteen, or until they acquire a settlement in their own right; instead of taking, as formerly, the settlement of the place of their birth. The effect of this change in the law is that an unmarried woman, whose pregnancy in itself made her chargeable, is no longer hunted from the parish in which she happens to be, in order that the parish may not, by the birth of the child therein, be permanently charged with its maintenance.

The Poor-Law Commission of 1831 having expired, a new commission has been appointed under 10 & 11 Vict. c. 109, consisting of a president with a salary, and certain unpaid and ex-officio commissioners, namely, the lord president of the council, chancellor of the exchequer, home secretary of state, and lord privy seal. All the powers and duties exercised by the former commission are transferred to the new commission.

An act of the preceeding year, namely, 1846, mitigates the law relative to removals of the poor; and by 9 & 10 Vict. c. 66, no poor person can be removed from any parish in which such poor person had previously resided during five years; a wife or children are removable only with husband or parents.

Under 1 & 2 Vict. c. 56, poor laws are introduced into Ireland, but relief is confined to the "destitute" poor, who must be relieved in workhouses. Other poor persons may be assisted to emigrate.

*Statistics.*—The salaries and expenses of the commissioners for carrying into execution the poor-law acts in England and Ireland amounted to about 52,000*l.* in 1845. The chief English commissioner receives a salary of 2500*l.* a year, and the other commissioners 2000*l.* The salary of the chief secretary is 1200*l.*, and the two assistant-secretaries receive

700*l.* and 600*l.* according to seniority. The salary of the assistant-commissioners is 700*l.* a year, with allowances for travelling expenses. Before the business of forming the unions was completed, the number of assistant-commissioners acting in England was twenty-one, but the number is now restricted to nine, under the act 7 & 8 Vict. c. 101. A chief commissioner is appointed for Ireland, who sits in Dublin, and there is a staff of assistant-commissioners for Ireland.

The average sum expended for the relief of the poor in the three years 1783-4 and 5, was 1,912,241*l.*; and in the following years was as under:—

		Proportion per head on total Population.
1801	£4,017,871	9s. 1d.
1811	6,656,105	13 1
1821	6,959,249	10 7
1831	6,798,888	9 9
1841	4,760,929	6 2

The sums expended for *relief* for a year or two before the passing of the Poor-Law Amendment Act and in subsequent years are shown in the following table:—

£	£
1832 7,056,968	1839 4,421,714
1833 6,790,799	1840 4,576,965
1834 6,317,254	1841 4,760,929
1835 5,526,418	1842 4,911,498
1836 4,717,630	1843 5,208,027
1837 4,044,741	1844 4,976,093
1838 4,123,604	

A great saving has also been effected in irregular and illegal expenses in consequence of the appointment of auditors for the different Unions.

Number of in-door and out-door paupers relieved, including children, during the following years ending Easter or Lady-day:—

	Paupers.	Proportion per cent. to Population.
1803	1,040,716	12
1815	1,319,851	13
1842	1,429,356	9
1843	1,546,390	9·7
1844	1,477,561	9·3

Number of in-door paupers in 1844, 230,818; out-door 1,246,743. "Of the million and a half of persons thus relieved, a large proportion were permanent pau-

pers, but the number of new cases in the other three quarters may be safely estimated at half a million; so that the number of persons relieved in England and Wales, in the course of the parochial year 1844, may be taken at about two millions, or nearly one-eighth part of the actual population. In other words, about one person in eight, through the entire population, received relief from the poor's rate at some time during that year." (Eleventh Report of the Poor-Law Commissioners.) It should be recollected, however, that if a person ceases to receive relief and again applies for it he is reckoned twice over; but to what extent this is done cannot be ascertained from the Poor-Law Reports.

The expenditure of 585 Unions in England and Wales for 1843-4 was for	
In-maintenance	£705,253
Out-relief	2,726,451
Establishment charges and salaries	748,985
Workhouse loans repaid	183,898
Other charges connected with relief	5,584

Total . 4,370,171

The number of paupers relieved in 103 Unions in Ireland for the quarter ending 29th September, 1844, was 64,487. The average number of days during which each pauper was relieved was 92 days. The total number of Unions in Ireland is 130.

**POOR LAWS, SCOTLAND.** The foundation of the Old Poor Law of Scotland, was the act of parliament 1579, c. 74, which in so many respects resembled the celebrated English statute of the fourteenth of Elizabeth, passed a few years earlier, as to have been considered a mere adaptation from it. The Scottish act, however, fell short of the English in the one important particular of not providing for the care of the able bodied. By this old act, a settlement was acquired by birth, and once so established could not be changed unless by a seven years' industrial residence in another parish. By the act 1672, c. 18, this period was shortened to three years. The method of administering the law, which arose partly out of the terms of

the old acts, partly out of custom, and partly from the directions given to these sanctions by the judgments of the courts, was as follows:—In the rural parishes, the “kirk sessions,” or lowest ecclesiastical judicatories, consisting of the parish clergyman and certain elders, shared the management with the “heritors,” or rated landed proprietors; but it became customary for the latter body to interest themselves solely in the voting and levying of the rate, leaving its distribution and the management of the poor to the former. In those municipal corporations holding rank as royal burghs, the assessment and management lay with the corporate authorities. The funds for the relief of the poor were of two kinds. The collections at church doors, along with certain fees and eleemosynary bequests, constituting the one department; and rates assessed on the parish, or a substitute voluntarily paid instead of an assessment, the other. Of the sums collected at the church doors only a half went to the regular relief of those legally entitled to relief; the other became a fund for general charitable purposes at the command of the kirk session. In many cases there was no assessment, and the regular practice came to be, that if the miscellaneous sources were insufficient for the relief of the poor, the heritors and session in a country parish, or the magistrates in a town parish, might levy a rate. It became a common practice for the parties chiefly interested to agree to a “voluntary assessment,” for the purpose of postponing the imposition of a fixed legal rate. When an assessment was imposed, it became a rule that one half of it should be levied on the proprietors of land, in respect of their land; the other on householders, in respect of their “means and substance,” or their incomes so far as not derived from land. The adjustment of the rating was the ground of much dispute, and different parishes followed very distinct methods in practice.

For a considerable period, the Scottish system was very favourably received by political economists, who saw the country in a comparatively sound moral con-

dition, with a parsimonious poor law while the lavish system of England seemed to promote profligacy and idleness. But from the time when these doctrines were first promulgated, to the completion of the great change of the English poor law, a vast internal alteration had taken place in the social economy of Scotland. The comparative low rate of wages, attracting manufacturing capital from England, had caused a more than average migration of the rural labourers to the manufacturing districts, and a peculiarly rapid increase of the city population. It was found that with these complicated materials, the simple parochial system, adapted to a state of society where each man watched over the interests and the conduct of his neighbour, was incapable of grappling. It was found that even for poor country districts the system was unsuitable, because, though still far behind the English system in profusion, the town administrators were compelled by the voice of public opinion to become more liberal in their dispensations, while the managers of the country parishes not subject to the same influence, kept down the allowances, and thus gave the poor an inducement to endeavour to obtain a settlement by three years' industrial residence in the cities. Dr. Chalmers was the great champion of the old system. With the assistance of some enthusiastic followers, he organised the administration of a parish in the poorer parts of Glasgow, as a demonstration of the efficiency of which the system was capable. It was a very pleasing picture, but the public soon felt that the success with which one energetic individual and his enthusiastic followers might voluntarily perform the duties generally exacted by legal compulsion, was no sufficient ground for believing that the rest of the community can be at all times and in all places depended upon for the performance of onerous public services without the coercion of law.

The public were first awakened to the imperfections of the Scottish poor law by Dr. W. P. Alison, a physician in Edinburgh, and professor of the practice of medicine in the university. Having frequently administered professional ser-

vices to the poorer classes, he showed from his own experience that the utter inadequacy of the provision afforded to those who, by inability to work, or bad seasons, or revulsions in trade, were reduced to want, was an extensive cause of disease, vice, and misery. The city population speedily answered to this appeal, and associations were formed, and inquiries made in various directions. It was shown that the amount expended on the relief of the poor in Scotland amounted to little more than a sixth part of the sum distributed throughout an equal population in England by the economised poor law. In England, the expense of supporting the poor amounted to 6s. 10 $\frac{3}{4}$ d. per head of the population; in Scotland, to 1s. 2 $\frac{1}{2}$ d. In some of the Highland parishes, whence the most destitute objects emigrated over the rest of the country, the allowances were ludicrously small; and a Report made to the General Assembly of the Church of Scotland in 1839, enumerated instances where sums averaging from 3s. to 1s. yearly were solemnly awarded to destitute people, as the provision which the poor law made for their wants. In the mean time, the discussion of these matters had a tendency gradually to increase the amount of the provision for the poor. The practice of assessments made considerable progress, and a return to parliament in 1843 shows that between 1836 and 1841 the sums raised by assessment had increased from £89,101 to £128,858; while the sums raised by voluntary assessment had risen from £15,829 to £22,385. A commission was at last appointed to inquire into the whole state of the subject, and after hearing much evidence, they presented a Report, accompanied by a voluminous appendix, in 1843. The amendments proposed in this Report were supposed to be of a somewhat narrow nature; the country expressed dissatisfaction with them; and in 1845 a measure was passed embodying alterations considerably more extensive.

By this act, 8 & 9 Viet. c. 83, a board of supervision is appointed, consisting of persons connected with the municipal bodies and the administration

of justice in Scotland, with one salaried member, who gives constant personal attendance. The office of the board is in Edinburgh. This board is endowed with ample means for ascertaining, in all parts of the country, the condition of the poor, and the method in which the system of relief is administered. The board has, however, no directory or prohibitory control over the proceedings of the local boards. These bodies are, however, reorganised by the act. In the rural parishes where there is an assessment, the local board is to consist of landowners to the extent of £20 annual value, the kirk session, and certain elected representatives of the other rate-payers, according to the number fixed by the board of supervision. In city parishes, the boards are each to consist of four persons named by the magistrates, deputies not exceeding four from each kirk session in the city, and certain elected persons according to a number and qualification fixed by the board of supervision. In parishes where there is no assessment, the management is to continue under the old system. There is thus in this act no machinery for levying or exacting a rate for the poor, unless in those parishes where the persons more immediately concerned agree to such a measure. It is held, however, that the facilities which the statute gives the poor for exacting from the respective parochial authorities the relief to which they are entitled, will render it necessary to put more extensive funds at the disposal of the distributors of relief, and this can only be accomplished through the system of assessment. When persons apply for relief, it is provided that though they have no settlement, if the claim would be just in the case of their having one in the parish where it is made, subsistence must be afforded them till it is determined what parish is liable. When relief is refused, the applicant may apply to the sheriff, who may grant an order for temporary relief, and then hear parties, and decide whether the applicant is or is not entitled to relief. In this form, however, neither the sheriff nor any other judge can decide on the *adequacy* of relief. The initial step to any judicial

appeal against the amount of the relief afforded, is by an application to the board of supervision, and on that body reporting its concurrence, the applicant is placed on the poor-roll of the court of session, where he has the privilege of the question being discussed gratis. By this act, provision is made for medical attendance and medicines, being part of the system of pauper relief, and for the education of pauper children. It is provided, that for the purposes of the act, parishes may be united into "combinations." By a special clause, nothing in the act is to be construed as entitling the able-bodied to relief, and their claim is thus left in the state of doubt in which it stood before the passing of the act. Men deserting their wives and children are made liable to punishment as vagrants, a provision which it is hoped may afford a remedy to a defect which has long characterised the law of Scotland—the absence of any means by which deserted wives can make effectual claims on their husbands for sustenance to themselves and their children, without a regular action in the court of session. By the new act, a new and more specific mode of apportioning the assessment between landed and other property has been attempted to be established, but this provision is already a fruitful source of dispute and litigation. The time necessary to acquire an industrial settlement is increased from three to five years.

POOR'S RATE. [POOR LAWS AND SETTLEMENT.]

POPE, POKERY. [CATHOLIC CHURCH.]

POPULATION. [CENSUS.]

POPULATION. The circumstances which determine the proportion of the population to the area of any given country, are the first elements which we must take into the account in considering their social condition. In the lowest stage of human existence, in which men depend on hunting and fishing for a subsistence, they are scattered over an immense surface in order to obtain food; and as the animals which they pursue become scarce in one part, they remove to another. Though the numbers of a tribe may not average one individual to a square mile,

the difficulties of procuring subsistence are often so great, that frequent hunger and occasional famines have always characterised the savage state. Many of the tribes of North America which live near and among the Rocky Mountains are actual examples of this precarious mode of existence; and the white men who hunt the fur-bearing animals in the same regions are subjected to these inconveniences of a savage life. The purely pastoral state admits of a greater relative proportion of population: but the necessity of frequent removal from place to place in search of pasture does not admit of this proportion surpassing a certain limit, which is determined by the capabilities of the uncultivated land to feed their flocks and herds. If agriculture be resorted to, and the occupation of the shepherd be exchanged for that of the husbandman, the same tract when cultivated will sustain a larger population. In the early stages of agriculture, the implements of labour are few and imperfect; the clothing of each family is the produce of household industry; and the number of carpenters, blacksmiths, and other artificers is small. When a more minute division of employments takes place, and the husbandman is solely engaged in raising food, while others are employed in making clothing and supplying all the other wants of the population, the labour of the community becomes much more productive, and food being raised in greater quantities, this change is followed by an increase of the population; and when machines for abridging human labour are introduced, a further stimulus is given to the increase of population. An intelligent, healthy, and industrious population, who possess a good soil and abundance of mineral wealth, are enabled by improvements in machinery and labour-saving contrivances, not only to supply their own wants, but those of other countries in a less advanced state. When a country has succeeded in introducing the products of an extensively diversified industry into the markets of the world, the population may be continually increased, with a continual increase in the comforts which it enjoys. In the savage state, a tract of several hundred square

miles is overstocked by as many individuals: in nations which have reached the highest degree of civilization hitherto known, the population is as great to one single square mile.

Under all the diversity of circumstances in which the inhabitants of different parts of the world exist, their numbers are limited by the means of subsistence. If the population increases faster than the food for their support, poverty and misery ensue, and death thins their numbers, and brings them to a level with the means of subsistence. This effect may take place whether the population be one to a square mile or several hundreds. Hence the proportion of births, marriages, and deaths to the population, is as important an element in ascertaining the condition of the population of any country as the proportion of their numbers to each square mile.

The evils which arise when the population increases more rapidly than the means of subsistence had not escaped the notice of two of the most eminent writers of antiquity, Plato and Aristotle. (Plato, *Laws*, v., and *Republic*, v.; Aristotle, *Politik*, vii. 16.) In later times this truth had been seen by Dr. Franklin, Sir James Stewart (*Treatise on Pol. Econ.*, book 1), Mr. Townsend (*Essay on the Poor-Laws*), and other English and French economists. Their views attracted little attention at the time when they wrote. In England especially, during the eighteenth century, a false opinion prevailed that the population was diminishing; and subsequently the demand for men during the long war with France rendered the evils of a redundant population almost imaginary in general estimation. The decennial census of the population during the present century, the transition from war to peace, and the commercial embarrassments and periods of public distress which have been experienced, have given us the means of forming a better judgment on such matters; and the writings of the late Mr. Malthus have powerfully aided in producing correct views upon the questions of population. His 'Essay on the Principle of Population' was first published anonymously in 1798. This work was suggested by a paper in Godwin's 'En-

quirer,' and the author's object was to apply the principle of population in considering the schemes of human perfectibility and other speculations on society to which the French revolution had given birth. Hume (*Populousness of Ancient Nations*), Wallace (*Dissertation on the Numbers of Mankind in Antient and Modern Times*), and Dr. Price's writings of more recent date, were the authors from whom Mr. Malthus deduced the main principle of his Essay. In 1803 appeared a second edition, to which Mr. Malthus affixed his name, and which might be considered almost a new work. The author had in the interval directed his attention to an historical examination of the effect of the principle of population on the past and present state of society, and the subject was for the first time treated in a comprehensive and systematic manner. A third and fourth edition appeared a few years afterwards. The fifth edition, containing several additional chapters, was published in 1817. The sixth and present edition, which contained few alterations, was published in 1826. The title of the work as it at present stands is as follows:—'An Essay on the Principle of Population, or a view of its past and present Effects on Human Happiness, with an Inquiry into our prospects respecting the future removal or mitigation of the evils which it occasions.' The following is a brief summary of its leading principles:—Mr. Malthus's propositions are—that population, when unchecked, goes on doubling itself every twenty-five years, or increases in a geometrical ratio; while the means of subsistence, under the most favourable circumstances, could not be made to increase faster than in an arithmetical ratio. That is, the human species may increase as the numbers 1, 2, 4, 8, 16, 32; while the increase of food would only proceed in the following ratio: 1, 2, 3, 4, 5, 6. Thus if all the fertile land of a country is occupied, the yearly increase of produce must depend upon improved means of cultivation; and neither science nor capital applied to land could create an increased amount of produce beyond a certain limit. But the increase of population would ever go on with unabated

vigour, if food could be obtained, and a population of twenty millions would possess as much the inherent power of doubling itself as a population of twenty thousand. Population however cannot increase beyond the lowest nourishment capable of supporting life; and therefore the difficulty of obtaining food forms the primary check on the increase of population, although it does not usually present itself as the immediate check, but operates upon mankind in the various forms of misery or the fear of misery. The immediate check may be either *preventive* or *positive*; the preventive is such as reason and reflection impose, and the positive consists of every form by which vice and misery shorten human life. Thus a man may restrain the natural appetite which directs him to an early attachment for one woman, from the fear of being unable to preserve his children from poverty, or in not having it in his power to bestow upon them the same advantages of education which he had himself enjoyed. Such a restraint may be practised for a temporary period or through life, and though it is a deduction from the sum of human happiness, the evil is less than that which results from the positive checks to population, namely, unwholesome occupations, severe labour, and exposure to the seasons, extreme poverty, bad nursing of children, excesses of all kinds, the whole train of common disease and epidemics, wars, plagues, and famines.

The preventive and the positive checks which form the obstacles to the increase of population are resolvable into, 1, moral restraint; 2, vice; 3, misery. *Moral restraint* (considered as one of the checks to population for the first time in the second edition, 1803) is the prudential restraint from marriage, with a conduct strictly moral during the period of this restraint. Promiscuous intercourse, violation of the marriage bed, and improper arts to conceal the consequences of irregular connections, are included under the head of *Vice*. Those positive checks which appear to arise unavoidably from the laws of nature may be called exclusively *Misery*. Such are the checks which repress the superior power of

population, and keep it on a level with the means of subsistence.

The 'Essay on Population' places the question in every light which can elucidate the truth. It is divided into four books, the first of which notices the checks to population in the less civilised parts of the world and in past times. The second book passes in review the different states of modern Europe (most of which Mr. Malthus visited in the interval preceding the publication of the second edition), and he points out the checks to population which prevailed in each. Chapter xi. of this book is 'On the Fruitfulness of Marriages;' chapter xii. 'On the Effects of Epidemics on Registers of Births, Deaths, and Marriages;' and chapter xiii. is devoted to 'General Deductions from the preceding view of Society.' The third book comprehends an examination of the different systems or expedients which have been proposed or have prevailed in society, as they affect the evils arising from the principle of population in the first three chapters; the systems of equality proposed by Wallace, Condorcet, Godwin, &c. are considered. Several chapters are devoted to the consideration of poor-laws; corn-laws (first in connection with bounties on exportation, and secondly under restrictions on importation); the agricultural system; the commercial system; and the combination of both. The last two chapters are, 'Of increasing Wealth as it affects the Condition of the Poor;' and a summary containing 'General Observations.' The fourth book treats of 'Our Future Prospects respecting the Removal or Mitigation of the Evils arising from the Principle of Population.' Chapter i. treats 'Of Moral Restraint and our Obligations to practise this Virtue.' Chapter ii. is 'Of the Effects which would result to Society from the prevalence of Moral Restraint.' Chapter iii. is 'Of the only effectual Mode of Improving the Condition of the Poor.' And the last chapter is 'Of our rational Expectations respecting the Future Improvement of Society.'

Perhaps no author has been more exposed to vulgar abuse than Mr. Malthus. He was accused of hardness of heart,

and represented as the enemy of the poorer classes, whereas no man was more benevolent in his views; and the earnestness with which he engaged in his work 'On Population' arose from his desire to diminish the evils of poverty. His mind was philosophic, practical, and sagacious; his habits, manners, and tastes, simple and unassuming; his whole character gentle and placid. The last edition of his 'Principles of Political Economy' contains an interesting memoir of his life and writings by Dr. Otter, late Bishop of Chichester, who had known him intimately for half a century. A list of Mr. Malthus's works and writings is given in page 42 of this 'Memoir': it is a matter of regret that they have never been published in a collected form. Several of his most valuable productions appeared in the Edinburgh and Quarterly Reviews. Mr. Malthus was born at Albury, near Guildford, in 1766; became a fellow of Jesus College, Cambridge, and entered holy orders: he afterwards married. In 1804 he was appointed Professor of History and Political Economy at the East India College, Haileybury, the duties of which he fulfilled to the time of his death, in December, 1834. Mr. Malthus was a Fellow of the Royal Society and member of the National Institute of France. It is not creditable to those who had the distribution of ecclesiastical patronage, that Mr. Malthus never held any preferment in the church. From this brief notice of the individual whose name is so intimately identified with the theory of population, to the elucidation of which the best part of his life was devoted, we return to the subject of the present article.

Although circumstances may sometimes occur in which the tendency of population to outstrip the means of subsistence may be counteracted, and food may for a time increase faster than population, yet this only gives an impulse to population, and the former proportion is quickly re-established, provided no improvement takes place either in the prudential habits of the people or in the elevation of their tastes and desires. The poverty and misery which are observable among the lower classes of the

people in every country can in a great degree be accounted for by a reference to the principle of population. It is evident, for example, that the rate of wages depends, for one of its elements, on the proportion between population and the means of employment, or in other words capital; and that any alteration in either directly affects wages. If population has increased while the funds for employing labour have remained stationary, the competition of labourers will cause the rate of wages to decline. If, on the other hand, capital has increased faster than population, or capital has been concentrated on any given spot more rapidly than population, wages will rise in the former case, and in the latter will be higher than in other places where the same thing has not taken place. Thus occasionally in some parts of the United States so many emigrants with capital will flock to a single spot, that the wages of carpenters, tailors, and others, whose labour is in immediate demand, will become very high compared with any other place that has not been recently settled. The tendency of population to increase is the same under all circumstances, but this is not the case with capital: for in proportion to the capital already accumulated, the difficulty of adding to it becomes greater, that is, the field for the employment of capital becomes less extensive. Under such circumstances wages would have a constant tendency to fall, if the checks to population did not interpose; but it depends upon the people themselves whether the level is to be maintained by vice and misery, or by habits of prudential restraint, which, if adopted, would certainly secure to them a fair proportion of the necessaries of life.

The great problem of society is to maintain the most beneficial proportion between population and food—"to unite two grand desiderata, a great actual population and a state of society in which squalid poverty and dependence are comparatively but little known." Disheartening as the evils resulting from the principle of population may at first sight seem, they are capable of mitigation. This principle may even be regarded as one of



the great springs of human improvement—as the parent of invention and the stimulus to exertion—which preserves society from that state of imbecility and decline into which it would fall if not urged onward by some extraordinary power. It is the interest of all members of society, and is particularly incumbent on those who have the power, to use their best exertions to elevate the habits, tastes, and moral feelings of the people; and by this means to render every successive material improvement conducive to the happiness of society. If this be not done, as much wretchedness as we find in the lower stages of society may co-exist with the highest efforts of art and science, and the greatest perfection in all the processes of industry. Even the introduction of vaccination or any similar means of diminishing mortality is of little avail provided the number of marriages continue the same without any corresponding increase of the resources of society, and the average mortality will not be diminished, but disease will be fatal under other forms. Every improvement which tends to increase the quantity of human food, and every invention which enriches society by cheapening the processes for obtaining the necessities of life, should be accompanied by a corresponding advance in the intellectual and moral character of a nation, in order to secure all the advantages which these improvements are calculated to confer.

Mr. Malthus's theory is now generally accepted as the true exposition of the principle of population. Many of the objections that have been urged against it are hardly worthy of notice. Some are content to quote the Scripture command, "Increase and multiply," forgetful of the moral obligations which are imposed in connection with it. Others have imagined that they have discovered a supernatural law of fecundity which varies with the fluctuating circumstances of society. Dr. Price, Mr. Godwin, and Mr. Sadler entertained this notion. Mr. Malthus's reasons for not replying to Mr. Godwin's work are stated in the appendix to the sixth edition of the 'Essay on Population.' The fallacies of Mr.

Sadler's work are most ably exposed in the 'Edinburgh Review,' No. 102. Mr. Senior is the only economist of any distinction who has objected to the theory of Mr. Malthus. He contends, in his 'Two Lectures on Population,' for the doctrine that "the means of subsistence have a natural tendency to increase faster than population." The appendix to these 'Lectures' contains a correspondence between Mr. Malthus and Mr. Senior on their respective views: it exhibits the latest views of Mr. Malthus, though, after forty years' anxious reflection on the subject, he had no change to make in his opinions.

The latest works on population are, 'The Principles of Population, and their Connection with Human Happiness,' by Archibald Alison, Esq., published in 1840; and 'Over-Population and its Remedy; or, an Inquiry into the Extent and Causes of the Distress prevailing among the Labouring Classes, and into the Means of Remedying it,' by W. T. Thornton (1846).

The disputes about the principle of population, like those which have arisen in many other questions of a like kind, are mainly owing to the ambiguity of language: in fact they are very little more than questions about the consistent use of words. If we analyse the proposition of Mr. Senior, it will appear that it is not easy to conceive with clearness the meaning of its terms. The words "means of subsistence" may signify the subsistence which is obtained from spontaneous products of the earth, and from the natural increase of animals. The products of the earth may be said to have a natural tendency to increase, or naturally to increase, or rather to be produced: and it may, for argument's sake, be admitted, though it is not true, that animals have the same kind of natural tendency to increase, or are in like manner naturally increased, or rather are produced. There is no other natural tendency to increase, or natural increase, or natural produce, that we can conceive, if the word "natural" is to have its ordinary acceptation. The increase of population, or the produce of new population, may be said to be natural, exactly in the same sense in which the

increase or produce of animals generally may be called natural. If then this should be the sense of the word "natural," the proposition means that vegetables and animals (not including man) have a natural tendency to increase faster than man, who is an animal—a proposition which is not worth the trouble of discussion.

But this is not the meaning of the writer who maintains this proposition: he is evidently speaking of human labour and its products when he is speaking of the "means of subsistence." The term "means of subsistence" therefore contains the notion of human labour; and "means of subsistence" are the products obtained by human industry applied to material objects. Everything "natural" therefore is by the very force of the term "means of subsistence" excluded from these words; for it is not of natural produce simply that the writer is speaking, but of that which human labour produces: in other words, though nature (to use the vulgar term) co-operates, the thing produced is not viewed as nature's product, but as the product of human labour. There is then nothing "natural" in "the means of subsistence," and therefore there is no natural tendency to increase in the means of subsistence; and consequently the comparison contained in the proposition between things that have no natural tendency to increase, and things that, in a sense, have a natural tendency, is unmeaning. Whether then the assertion be that "there is a natural tendency in population to increase faster than capital" (Mill), or "that the means of subsistence have a natural tendency to increase faster than population" (Senior), in either case the use of the word "natural" is incorrect, and not only tends to cause, but does cause confusion. It should be observed that in enunciating this proposition, Mr. Senior sometimes omits the word "natural."

Again, the natural tendency of population to increase is simply the desire and the power to gratify the animal passion, the consequence of which is the physical union of the sexes and the production of their kind. But this tendency (to use again this very vague expression) is

positively checked by want of food and other things necessary for human sustentation and health. If food and such other things could be had to an indefinite amount without any labour, so far as food and such other things only are necessary to its increase, population would go on continually increasing. But the actual conditions of obtaining food and such other things are human labour; that is, the labour of those animals, who if supplied with all that they want without any labour, *might* go on increasing indefinitely. It appears then that this so-called natural tendency of population to increase has no *effect*, that is, it remains a tendency; that is, it is nothing at all in results, unless man labours; and the amount of his labour, in considering this question, is quite immaterial. It is unimportant whether it consists in making a plough and ploughing the earth, or plucking an apple from a tree and eating it. The whole proposition then may be developed thus:—The means of subsistence are only produced or had by man's labour: these "means of subsistence" so produced have no natural tendency to increase, except so far as man has a natural tendency to increase. Now, man has in a sense a natural tendency to increase, that is, he has a desire and a capacity to increase, and he can increase if he has the means of subsistence. But he must have the means of subsistence first; and if the actual means of subsistence are only sufficient for the actual population, there can be no increase of the population till the means of subsistence are increased. The "means of subsistence," at any given time, and in any given nation, signify those things which the individuals of that nation require according to their several stations and the habits of society: they may be the bare means of sustaining life; or they may be those things also which Mr. Senior has well defined under the heads of "decencies" and "luxuries." If while the means of subsistence remain the same, the population lower their scale of living, it may increase further, for the relative means of subsistence are by the supposition increased. It is true that this lowering of

the scale of living is an evil, inasmuch as it tends to make society move in a retrograde direction: there is also a limit to the extent to which the scale of living can be lowered. The antecedent condition then on which the increase of population depends is its own labour, for it cannot increase without the increase of the means of subsistence, and such increase is the effect of labour only.

We can never contemplate human society in its origin. We must contemplate it in its progress and development. All theories as to how man *began* to propagate and gain the means of subsistence are useless towards the solution of any problem that concerns his condition. We know this, and no more: at any given time, and in any given state of society, there is a certain population which subsists in a certain mode by and out of the means of subsistence which it then has; and these means are partly the product and accumulation of the actual generation, and partly the accumulation of their progenitors. If the means of subsistence (thus understood) of that population are sufficient, and no more than sufficient, any increase of the population must be preceded by increased labour, or by labour rendered more productive. We cannot suppose the population to increase first, and then the additional means of subsistence to be produced; for by the supposition the actual population has only sufficient, and that which is "increase" must be fed out of some other store; and by the supposition, there is no other store.

If it is said that children may be born and are often born, before the means of subsistence, the "revenue of the whole society," has been increased, the answer is that they either die before they have partaken of the then existing means of subsistence, and therefore they are no "increase" of population; or they do live to partake of the general revenue, of the then existing means of subsistence, in which case it must be admitted that population has increased without an increase of the whole means of subsistence; but the consequence is that the average portion of the general revenue which each person gets is less than it was before.

The fact is, that in some countries the means of subsistence are barely sufficient for the existence of the actual population; in others they are more than barely sufficient. In the former case there can be no real increase of population, in the sense in which increase has just been explained, until there has first been an actual increase in the means of subsistence; in the latter case there may be an increase of the population before there is an increase of the means of subsistence, and this increase of population may go on without any increase in the means of subsistence, until the people have reached the lowest limit of subsistence in consequence of each man's share of the general revenue being diminished.

It is clear then that the "means of subsistence" (as above explained) must be first, and increase of population may then follow, and generally does follow to the full amount of these increased means of subsistence; and further, population may and sometimes does increase beyond the amount of such increased means, but it is then of necessity checked by actual suffering in the whole or in a part of the society. And this, we conceive, is the meaning of Mr. Malthus's proposition.

There seems to be an error (or rather, looseness of expression in most writers) in the mode of comparing the rate of increase of the two things, "means of subsistence" and "population." There can be no useful comparison of the rate of increase between these two things except this: a given population may attain its increase, which is proportionate to the antecedent increased means of subsistence, in a less time than these increased means of subsistence were produced; or it may take a longer time. There is also no question about a *tendency* to increase either in the one thing or the other; the question is about an actual increase, which can only take place under the conditions already stated.

The question is perplexed, and its true statement rendered difficult by the fact that an increase of the whole means of subsistence and an increase of the population may be, and generally are, going on at the same time; and it seems to have been supposed that this increase of

population, during a given time, is owing to the *then* increasing means of subsistence. But this cannot be true if it shall be admitted that a given amount of population cannot be increased, unless the actual amount of the means of subsistence of that population is first increased, or, which is the same thing, the rate of living is reduced. If some writers on this subject have not meant what is here imputed to them, they have certainly not sufficiently guarded themselves against the imputation.

There is still another consideration which perplexes the question. For very short periods it is certainly conceivable, and it is very probably the case, that sometimes population is increasing (in a certain sense) at a faster rate than the means of subsistence; that is, taking short intervals, it will or may be found that the population, during such intervals, has outstripped the means of subsistence existing at the end of such intervals, and a part of it must therefore die. These deaths consequently take place either in the whole population, or among those whose means of subsistence are reduced; for some parts of the community may and do enjoy, under such circumstances, as much as they did before, while others do not. In practice, a deficient allowance is not distributed among all, but some suffer and others do not. But on the other hand it is conceivable, and it may be true, that for short intervals the means of subsistence may sometimes be increasing more rapidly than the contemporaneous increase of population; that is, the actual population may possess and be producing and accumulating the means of subsistence more than sufficient for the sustentation of themselves and of the addition to the population made during the time of such production and accumulation. Now this is certainly the fact in many societies, as to part of the society; one part is producing and accumulating more than is necessary for the increase of the population which it is producing; this is the case with many of the middle classes in all industrious communities. At the same time another class is increasing its population at a greater rate

than the means of subsistence applicable to such increase: the check to such an increase is obvious. There is no reason why this may not be true of a whole population, as it is of a part.

On the whole, the experience of mankind proves that the sexual passion will, if unrestrained, always, or except under very peculiar circumstances, nearly always increase the population by new births up to the level of the means of subsistence at each moment existing; during short intervals the propagation of the species may also have been so active as to have outstripped the means of subsistence existing at the end of such intervals. But though the population during short intervals may so increase, its increase at the end of a series of such consecutive intervals can only be the effect of a previous increase in the means of subsistence; always supposing the condition of the people not to be growing worse, for there may be, as already observed, an increase of population up to the limit of a bare subsistence, without any actual increase in the whole means of subsistence. Therefore the increase of the means of subsistence, that is, the products of human labour, are the antecedent conditions of any actual increase, and the increase of population may be to the amount of such increase, but cannot surpass it. If for short periods the increase of population does surpass the increase on which by the supposition it depends, the increase is checked; and on taking the account at longer intervals, there is, or may be, no actual increase of the population. If for short periods the increase of the means of subsistence surpasses the increase of population, this is made up in the next periods by an increase in the population. There is then, or may be, a constant fluctuation for short periods, the population and the means of subsistence alternately increasing with greater rapidity. But any increase of population, even for a short period, supposes a previous increase of the means of subsistence over those which the actual population found to be merely sufficient before the commencement of such short period; whatever may be the comparative rates of increase

between the two during such short period. It seems then that in the sense here explained population may so rapidly increase that at the end of an interval from the commencement of which the increase of population is reckoned, the means of subsistence existing at the commencement of such interval, and which were sufficient for the then population and something more, added to the means of subsistence produced during such interval, may be insufficient to support the population existing at the end of such interval, in the same way in which the existing population at the commencement of such interval was living; and, on the other hand, the means of subsistence existing at the end of such interval may be more than sufficient to support the population existing at the end of such interval in the same way of living. At the end of any long interval, if there is an increase of population, as compared with the commencement of such interval, there has been during such interval, on the whole, a balance on the side of the means of subsistence, provided the mode of living has not been lowered; and a fortiori, there must have been such balance, if the mode of living has been raised; that is, the means of subsistence at the commencement of such interval, and those produced during it, have been sufficient to produce and leave in existence at the end of such interval, a larger population than at the commencement of it. This excess on the side of the means of subsistence, if distributed equally through every moment of the long interval, would leave at the end of each such interval a surplus of subsistence, the antecedent condition of an increase in the following interval. The actual fact may be that in some intervals population has passed a little beyond what was provided at the beginning of and during such intervals, the consequence of which is a diminution in its rate of increase in the next interval, and sometimes an increase of deaths. In discussing this question, it is always actual increments that are to be considered, and both for short and long periods. The tendency is nothing; for a tendency of any kind, that is, a capacity to or for

a given end, means nothing in such speculations as these, unless it becomes an effect.

The principle of population is stated by Mr. Malthus with more precision than by some writers who have adopted his opinions; and though it seems to us that his language is not always quite free from objection, his real meaning is perfectly so. His correspondence with Mr. Senior shows this. The importance of right notions on this subject must be our apology for this further attempt at explaining it.

PORTREEVE. [MUNICIPAL CORPORATIONS.]

POSITIVE LAW. [Law, p. 381.]

POSSE COMITATUS (literally, the power of a county) comprises all able-bodied males within the county between the ages of 15 and 70 years. All such persons, without any exception, are bound to aid the sheriff in all matters that relate to his office; and he is fineable if he neglect to avail himself of their aid. In case of any invasion, rebellion, riot, &c., or breach of the peace within the county, all such persons, on pain of fine or imprisonment, are bound to attend him on being charged by him to do so, and to assist in opposing and suppressing them. They may come armed, and are justified in killing a person in case of resistance. The power of the county may also be raised when necessary for the purpose of apprehending traitors, felons, &c., and that even within particular franchises. It is lawful for any peace-officer, and perhaps even for a private person, to raise a competent number of people for the purpose of opposing and suppressing enemies, rebels, rioters, &c. within the county. But all such persons are punishable if they use unnecessary violence or create false alarms. It is also the duty of the sheriff or any minister of the king who has the execution of the king's writs, or process even in a civil nature, who meets with actual resistance in his attempt to execute them, to raise a power sufficient to quell the resistance. (2 Inst., 193, 194; 3 Inst., 161; 1 Hawk., P. C., 152, 156.)

POSSESSION. In endeavouring to explain the meaning of this term, we

shall use the following extracts from Savigny's work on the Law of Possession (*Das Recht des Besitzes*, Giessen, 1827).

"All the definitions of possession are founded on one common notion. By the notion of possession of a thing we understand that condition by virtue of which not only are we ourselves physically capable of operating upon it, but every other person is incapable. This condition, which is called Detention, and which lies at the foundation of every notion of possession, is no juristical notion, but it has an immediate relation to a juristical notion, by virtue of which it becomes a subject of legislation. As ownership is the legal capacity to operate on a thing at our pleasure, and to exclude all other persons from using it; so is detention the exercise of ownership, and it is the natural state which corresponds to ownership as a legal state. If this juristical relation of possession were the only one, everything concerning it that could juristically be determined, would be comprehended in the following positions:—the owner has the right to possess; the same right belongs to him to whom the owner gives the possession; no other person has this right.

"But the Roman law, in the case of possession, as well as of property, determines the mode in which it is acquired and lost; consequently it treats possession not only as a consequence of a right, but as a condition of rights. Accordingly, in a juristical theory of possession, it is only the right of possession (*jus possessionis*) that we have to consider, and not the right to possess (called by modern jurists, *jus possidendi*), which belongs to the theory of property.

"We now pass from the notion of mere detention to that of juristical possession, which is the subject of this treatise. The object of the first part, which is the foundation of the whole investigation, is to determine this notion formally and materially. Formally, by explaining those rights which presuppose possession as a condition, and consequently determining the signification which the non-juristical notion of detention obtains in jurisprudence, in order to

its being considered as something juristical, that is, Possession; materially, by enumerating the conditions which the Roman law requires for the existence of possession, and consequently the positive modifications under which detention can be viewed as possession.

"The formal determination of the notion by force of which alone possession can become a subject of jurisprudence, is divided into three parts; first we must determine the place which possession, as a legal relation, occupies in the system of Roman law. We must then enumerate the rights which the Roman law recognises as a consequence of possession, and we must also examine the rights which are improperly considered rights of possession. It will then be easy to answer the questions whether possession is to be considered as a right, and whether as a *jus in re*. The first and simplest mode in which possession appears in a system of jurisprudence consists in the owner having the right to possess; but we are here considering possession independent of ownership, and as the source of peculiar rights; the former of these two questions therefore may be expressed thus—in what sense has possession been distinguished from ownership? a mode of expression which has been used by many writers.

"In the second place we must determine how the different senses in which possession occurs in the Roman law are distinguished from one another by the mode of expression; and particularly what were the significations of *Possessio* generally, and *Possessio naturalis*, and *Possessio civilis*, among the Roman jurists.

"In the whole system of Roman law there are only two consequences which can be ascribed to possession of itself, as distinct from all ownership, and these are Usucapion and Interdicts.

"The foundation of usucapion is the rule of the Twelve Tables, that he who possesses a thing one or two years becomes the owner. In this case bare possession, independent of all right, is the foundation of property, which possession must indeed have originated in a particular way, in order to have such effect; but

still it is a bare fact, without any other right than what such effect gives to it. Accordingly it is possession itself, distinct from every other legal relation, on which usucapion, and consequently the acquisition of ownership, depends.

"Possessorial interdicts are the second effect of possession, and their relation to possession is this: possession of itself being no legal relation, the disturbance of possession is no violation of a legal right, and it can only become so by the circumstance of its being at the same time a violation of a legal right. But if the disturbance of possession is effected by force, such force is a violation of right, since every forcible act is illegal, and such illegal act is the very thing which it is the object of an interdict to remedy. All possessorial interdicts then agree in this: they presuppose an act which in its form is illegal.\*

"Now since possessorial interdicts are founded on such acts as in their form are illegal, it is clear why possession, independent of all regard to its own rightfulness, may be the foundation of rights. When the owner claims a thing as his property (*vindicatio*), it is a matter of perfect indifference in what way the other party has obtained possession of it, since the owner has the right to exclude every other person from the possession of it. The case is the same with respect to the interdict, by which the '*missio in possessionem*' is protected: this interdict is not a possessorial interdict, for the '*missio*' itself gives no possession, but it gives a right to detention, and this right is made effective in the same way as in the case of property. On the other hand, he who has the bare possession of a thing has not on that account any right to the detention, but he has a right to require from all the world that no force shall be used against him. If, however, force is used and directed against his possession, the possessor protects himself by means of the interdicts. Possession is the condition of these in-

terdicts, and in this case, as in the case of usucapion, it is the condition of rights generally.

"Most writers take quite a different view of the matter, and consider every violation of possession as a violation of a legal right, and possession consequently as a right of itself, namely, presumptive ownership, and possessorial plaints as provisional vindications. This last, which is the practical part of this opinion, is completely confuted in a subsequent part of this treatise; but it is proper to show here how far such a view is true, as this may be a means of reconciling conflicting opinions. The formal act of illegality above mentioned is not to be so understood, as if possessorial interdicts were a necessary consequence of the independent juristical character of force, and obviously sprung out of it. This consequence of force, namely, that possession of the thing must be restored to the person who has been ejected, without regard to the question whether or not he has any right to the thing, is rather simply a positive rule of law. Now, if we ask for the reason of this kind of protection being given against force, that is, why the ejected party should recover the possession to which he may possibly have no title, it may be replied, that the reason is the general presumption that the possessor may be the owner. So far then we may view possession as a shadow of ownership, as a presumed ownership; but this view of the matter only extends to the establishment of the rule of law in general, and not to the legal reason for any particular case of possession. This legal reason is founded rather in the protection against the formal injury, and accordingly possessorial interdicts have a completely obligatory character, and can never be viewed as provisional vindications."

The special object of Savigny's essay may be collected from these passages. The legal principles here developed are applicable to every system of jurisprudence. There must always be a distinction between the right to possess, which is a legal consequence of ownership, and the right of possession, which is inde-

\* Possessorial interdicts were not limited to cases of violence; they comprehended the three *actio possessionis*. (Fereux, *Ennuch.* ii. 3; v. 27.)

pendent of all ownership. The owner of a thing may not have the possession, but he has a right to the possession, which he must prosecute by legal means. The possessor of a thing, simply as such, has rights which are the consequences of his possession; that is, he is legally entitled to be protected against forcible ejection or fraudulent deprivation; his title to a continuance of his possession is good against all persons who cannot establish their right to the thing, and this continued possession may, according to the rules of positive law in each country, become the foundation of ownership. It may be that the acquisition of possession may also be the acquisition of ownership, or that the acquisition of possession may be essential to the acquisition of ownership. Thus, in the case of occupation, the taking possession of that which has no owner, or the acquisition of the possession, is the acquisition of the ownership. Also, when a thing is delivered by the owner to another, to have as his own, the acquisition of the possession is the acquisition of the ownership. In these examples, ownership and possession are acquired at the same time, and there is no right that belongs to the possessor as possessor; his rights are those of owner. But the form and mode of the acquisition of the possession, viewed by itself as distinct from the acquisition of the ownership, will also be applicable to the cases of possession when possession only is acquired. For possession of itself is a bare fact, though it has legal consequences; and being a bare fact, its existence is independent of all rules of the civil law or of the *jus gentium*, as to the acquisition and loss of rights. (Savigny, p. 25.)

Having shown that in the Roman law all juristical possession has reference to occupation and interdicts, and that the foundation of both is a common notion of juristical possession, Savigny proceeds to determine the material conditions of this notion.

In order to lay the foundation of possession as such, there must be detention, and there must also be the intention to possess, or the "*animus possidendi*." Consequently the "*animus possidendi*"

consists in the intention of exercising ownership. But this ownership may either be a person's own ownership, or that of another: if the latter, there is no such "*animus possidendi*" as makes detention amount to possession. In the former case a man is a possessor, because he treats the thing as his own: it is not necessary that he should believe it to be his own.

Whether then we are considering possession as such, or that possession which is concurrently acquired with ownership, or which completes the acquisition of, or is the exercise of, ownership, the material facts of possession are the same. When ownership is transferred from one man to another, every system of law must require some evidence of it. But the evidence of the transfer of ownership may be entirely independent of the evidence of acquisition of possession; and also the evidence of the acquisition of possession may be inseparable from that of the acquisition of ownership. There must then generally be some act which shall be evidence of the acquisition of possession, whether possession as such is obtained without ownership, or possession accompanied by ownership, or possession as necessary to the complete acquisition of ownership, or possession as simply the exercise of ownership.

It is remarked by Savigny (*Das Recht des Besitzes*, p. 185), "that in the whole theory of possession nothing seems easier to determine than the character of corporeal apprehension which is necessary to the acquisition of possession. By this fact all writers have understood an immediate touching of the corporeal thing, and have accordingly assumed that there are only two modes of apprehension: laying hold of a moveable thing with the hand; and entering with the foot on a piece of land. But as many cases occur in the Roman law in which possession is acquired by a corporeal act, without such immediate contact, these cases have been viewed as symbolical acts, which, through the medium of juristical fiction, become the substitute for real apprehension." After showing that this is not the way in which the acquisition of possession is understood in the Roman



law, and that there is no symbolical apprehension, but that the acquisition of possession may in all cases be referred to the same corporeal act, he determines what it is, in the following manner :

"A man who holds a piece of gold in his hand is doubtless the possessor of it; and from this and other similar cases has been abstracted the notion of a *corporeal contact generally* as the essential thing in all acquisition of possession. But in the case put, there is something else which is only accidentally united with this corporeal contact, namely, the physical possibility to operate immediately on the thing, and to exclude all others from doing so. That both these things concur in the case put, cannot be denied: that they are only accidentally connected with corporeal contact, follows from this, that the possibility can be imagined without the contact, and the contact without the possibility. As to the former case, he who can at any moment lay hold of a thing which lies before him, is doubtless as much uncontrolled master of it as if he actually had laid hold of it. As to the latter, he who is bound with cords has immediate contact with them, and yet one might rather affirm that he is possessed by than that he possesses them. This physical possibility then is that which as a fact must be contained in all acquisition of possession: corporeal contact is not contained in that notion, and there is no case in which a fictitious apprehension need be assumed."

This clear exposition of a principle of Roman law is applicable to all systems of jurisprudence which have received any careful elaboration, for the principle is in its nature general. It may be that the expounders of our law have not always clearly seen this principle, even when they have recognised it; and it may be that they have not always acted upon it. Still it will appear from various cases that the physical possibility of operating on a thing is the essential character of the acquisition of possession in the English law. In the case of *Ward v. Turner* (2 Vez., 431) it was held by Lord Hardwicke that delivery of the thing was necessary in a case of "donatio

mortis causâ," and delivery of receipts for South Sea Annuities was not held sufficient to pass the ownership of the annuities. In his judgment Lord Hardwicke observed, "delivery of the key of bulky things, where wines, &c. are, has been allowed a delivery of the possession, because it is the way of coming at the possession, or to make use of the thing; and therefore the key is not a symbol, which would not do." In one of his chapters (§ 16, *Apprehension beweglichen Sachen*) Savigny uses the very same example of the key, showing that it is not a symbol, but the means of getting at things which are locked up, and therefore the delivery of the key of such things, when they are sold, is a delivery of the possession. (See the cases in the *Digest* cited by Savigny, p. 209.)

**POST-OFFICE.** Correspondence is the offspring of advanced civilization. When the state of society in this country anterior to the seventeenth century is considered, there can be little surprise that we hear nothing of a post-office before that period. The business of the state only demanded correspondence. The king summoned his barons from all quarters of the kingdom by letters or writs, and held frequent communication with his sheriffs, to collect his parliament together, to muster his forces, to preserve his peace, to fill his treasury. The expenses of the establishment of Nuncii, charged with the conveyance of letters, formed a large item in the charges of the royal household. As early as the reign of King John, the payments of Nuncii for the carriage of letters may be found enrolled on the Close and Misc. Rolls, and these payments may be traced in an almost unbroken series through the records of subsequent reigns. Nuncii also formed part of the establishment of the more powerful nobles. The Nuncios of the time of King John was probably obliged to provide his own horse throughout his journey; whilst in the reign of Edward II. he was able, and found it more suitable, to hire horses at fixed posts or stations. In 1481, Edward IV., during the Scottish war, is stated by Gale to have established at certain posts, twenty miles apart, a change of riders, who handed

letters to one another, and by this means expedited them two hundred miles in two days. The Persians had a similar means of communication, which is described by Herodotus (viii. 98). It would seem that in England the posts, at which relays of riders and horses were kept, were wholly private enterprises; but that when their importance became felt and appreciated, the state found it both politic and a source of profit to subject them to its surveillance. A statute in 1548 (2 & 3 Edw. VI. c. 3) fixed a penny a mile as the rate to be chargeable for the hire of post-horses.

In 1581 one Thomas Randolph is mentioned by Camden as the chief postmaster of England, and there are reasons for concluding that his duties were to superintend the posts, and had no immediate connection with letters. The earliest recital of the duties and privileges of a postmaster seems to have been made by James I. The letters patent of Charles I. in 1632 (*Pat.*, 8 Car. I., p. i. m, 15 d; *Fœdera*, vol. 19, p. 385) recite that James constituted an office called the office of postmaster of England for foreign parts being out of his dominions.

In 1635 a proclamation was made "for settling of the letter-office of England and Scotland." It sets forth "that there hath been no certain or constant intercourse between the kingdoms of England and Scotland;" and commands "Thomas Witherings, Esq., his Majesty's postmaster of England for foreign parts, to settle a running post or two, to run night and day between Edinburgh and Scotland and the City of London, to go thither and come back in six days." Directions are given for the management of the correspondence between post-towns on the line of road and other towns which are named, and likewise in Ireland. All postmasters are commanded "to have ready in their stables one or two horses:" twopence-halfpenny for a single horse and fivepence for two horses per mile were the charges settled for this service. A monopoly was established, with exceptions in favour of common known carriers and particular messengers sent on purpose. In 1640 a

proclamation was made concerning the sequestration of the office of postmaster for foreign parts, and also of the letter-office of England, into the hands of Philip Burlamachy of London, merchant; but in 1642 it was resolved by a committee of the House of Commons that such sequestration was "a grievance and illegal, and ought to be taken off," and that Mr. Witherings ought to be restored. As late as 1644 it appears that the postmaster's duties were not connected directly with letters. A parliamentary resolution entered on the Journals of the Commons states "that the Lords and Commons, finding by experience that it is most necessary, for keeping of good intelligence between the parliament and their forces, that post stages should be erected in several parts of the kingdom, and the office of master of the posts and couriers being at present void, ordain that Edmund Prideaux, Esq., a member of the House of Commons, shall be, and is hereby constituted, master of the posts, messengers and couriers." "He first established a weekly conveyance of letters into all parts of the nation, thereby saving to the public the charge of maintaining postmasters to the amount of 7000*l.* per annum." (Blackstone.) An attempt of the Common Council of London to set up a separate post-office, in 1649, was checked by a resolution of the House of Commons, which declared "that the office of postmaster is, and ought to be, in the sole power and disposal of parliament."

But the most complete step in the establishment of a Post-office was taken in 1656, when an act was passed "to settle the postage of England, Scotland, and Ireland." This having been the model of all subsequent measures, induces us to give something more than a passing notice of it. The preamble sets forth "that the erecting of one General Post-office for the speedy conveying and recarrying of letters by post to and from all places within England, Scotland, and Ireland, and into several parts beyond the seas, hath been and is the best means not only to maintain a certain and constant intercourse of trade and commerce between all the said places, to the great benefit of the

people of these nations, but also to convey the publique despatches, and to discover and prevent many dangerous and wicked designs which have been and are daily contrived against the peace and welfare of this commonwealth, the intelligence whereof cannot well be communicated but by letter of escript." It also enacted that "there shall be one Generall Post-office, and one officer stiled the postmaster-general of England and comptroller of the Post-office." This officer was to have the horsing of all "through" posts and persons "riding in post." Prices for letters, both English, Scotch, Irish, and foreign, and for post-horses, were fixed. All other persons were forbidden to "set up or imploy any foot-posts, horse-posts, or packet-boats." These arrangements were confirmed in the first year of the Restoration by an Act which was repealed 9 Anne, c. 11. In 1683, a metropolitan penny-post was set up, the history of which is given at length in the 'Ninth Report of the Commissioners of Post-office Inquiry.' From 1711 to 1838, upwards of 150 acts affecting the regulations of the Post-office were passed. In the first year of Her present Majesty ninety-nine of these were repealed, either wholly or partially, and four Acts were passed (caps. 33, 34, 35, 36), by which the whole department of the Post-office was regulated. Their enactments have been abrogated, to a great extent, by the adoption of Mr. Rowland Hill's plan of uniform postage, which we shall presently notice. This measure was carried into effect by an Act passed in 1839, 2 and 3 Vic., c. 52, which conferred temporary powers on the Lords of the Treasury to do so, and was subsequently confirmed by an Act 3 & 4 Vic., c. 96, passed 10th August, 1840.

*Rates of Postage.*—The first establishment of a rate of postage for carrying letters occurs in 1635, in the proclamation already described. The rates were fixed as follows:—

Under 80 miles	2d. single letter.
Between 80 miles	
and 140 miles	4        "
Above 140 miles	6        "
On the borders and	
in Scotland	8        "

'Two, three, four, or five letters in one packet, or more, to pay according to the bigness of the said packet.' The rates of postage were successively altered in 1710, 1765, 1784, 1797, 1801, 1805, and 1812. In some instances the scale of 1765 was lower than that of 1710: one penny instead of threepence was charged for distances not exceeding fifteen miles; and twopence instead of threepence for two other distances. In the alterations made in subsequent years the rates of postage were increased each time. Before the uniform penny-postage was adopted the rates in use were as follows:—

Single letters from any post-office in England to any place not exceeding 15 measured miles from such office	4d.
Above 15 and not exceeding 20	5
20	6
30	7
50	8
80	9
120	10
170	11
230	12
300	13
And further for every 100 or part thereof	1

These rates were applied to general-post letters passing from one post-town to another post-town. The principle of the rating was to charge according to the distance which the conveyance travelled, until the year 1839, when the direct distance only was charged. A single letter was interpreted to mean a single piece of paper, provided it did not exceed an ounce in weight. A second piece of paper, however small, or any inclosure, constituted a double letter. A single sheet above an ounce was charged with fourfold postage. After a fourfold charge, the additional charges advanced by weight.

In Scotland, letters, when conveyed by mail-coaches only, were subject to an additional halfpenny. Letters passing between Great Britain and Ireland were subject to the rates of postage charged in Great Britain, besides packet rates, and Menai, Conway Bridge, or Milford rates.

The Postmaster-general had authority to establish penny-posts for letters not exceeding in weight four ounces, in, from,

or to, any city, town, or place in the United Kingdom (other than London or Dublin), without any reference to the distance to which the letters were conveyed. The London Twopenny Post extended to all letters transmitted by the said post in the limits of a circle of three miles' radius, the centre being the General Post-office in St. Martin's le Grand; which limits the Postmaster-general had authority to alter. The London Threepenny Post extended to all letters transmitted by the said post beyond the circle of three miles' radius, and within the limits of a circle of twelve miles' radius, the centre being the General Post-office.

The Select Committee of the House of Commons in 1838 and 1839, which investigated Mr. Rowland Hill's plan, reported the following to be the average rates of postage:—

*Average rates, Multiple Letters being included and counted as Single.*

	<i>d.</i>
Packet and ship letters . . .	nearly 23 $\frac{1}{2}$
— and inland general-post letters . . .	nearly 9 $\frac{3}{4}$
Ditto, ditto, and London 2d. and 3d. post letters . . .	nearly 8 $\frac{1}{2}$
Ditto, ditto, ditto, and country 1d. post letters . . .	little more than 7 $\frac{1}{2}$
Inland general-post letters only . . .	nearly 8 $\frac{3}{4}$
Ditto and London 2d. and 3d. post letters . . .	nearly 7 $\frac{1}{2}$
Ditto, ditto, and country 1d. post letters . . .	nearly 6 $\frac{3}{4}$

*Average rates, Multiple Letters being excluded.*

Single inland general-post letters . . .	nearly 7 $\frac{3}{4}$
Ditto and London 2d. and 3d. post letters . . .	little more than 6 $\frac{3}{4}$
Ditto, ditto, and country 1d. post letters . . .	nearly 6 $\frac{1}{4}$

*Franking.*—As early as a post-office was established, certain exemptions from the rates of postage were made. Parliamentary franking existed in 1666. In the paper bill which granted the post-office revenue to Charles II. a clause provided that all the members of the House of Commons should have their letters

free, which clause was left out by the lords, because no similar provision was made for the passing of their letters, but a compromise was made on the assurance that their letters should pass free.

In 1735 the House of Commons prosecuted some investigations into the subject, which appear on the Journals. Again, in 1764 (4 Geo. III.), a committee was appointed "to inquire into the several frauds and abuses in relation to the sending or receiving of letters and parcels free from the duty of postage." Resolutions restricting and regulating the privilege were passed. From time to time the privilege was extended, until it was finally abolished, with very few exceptions, on the 10th of January, 1843.

Seven millions of franks, out of sixty-three millions of general-post letters, including franks, were estimated in 1838 to pass through the Post-office annually.

The privileged letters, reduced to the standard of single letters, amounted to above 30 per cent. of the whole number of letters transmitted by the general post.

The average weight of a single chargeable letter was about 3-10ths of an ounce; the average weight of a parliamentary frank about 48-100ths of an ounce; that of an official frank 1-9376 oz., or nearly two ounces; and that of a copy of a public statute 3-1129 oz. Had they been liable to the then existing rates, they would have contributed 1,002,222*l.* to the revenue.

Newspapers with a few exceptions pass free of postage. Newspapers printed in foreign countries are charged a small rate of postage, which depends upon the granting of equivalent terms to English newspapers sent by post to such foreign countries. All franking is now altogether abolished.

*Revenue.*—The statistics of the Post-office revenue are far from complete. In the early period of the Post-office establishment, and before 1716, only a few scattered accounts can be collected. In 1653 the annual revenue was farmed for 10,000*l.*, and in 1659 for 14,000*l.* (Journals of the Commons). In 1663 it was farmed for 21,500*l.* annually, and the amount settled on the Duke of York. In 1674 the farming of the revenue yielded

43,000*l.* In 1685 it produced 65,000*l.* Parliament resumed the grant after 1688, though the king continued to receive the revenue. In 1711 the gross revenue was reckoned at 111,426*l.* From 1716 to 1733 the average yearly net revenue was 97,540*l.*, founded upon "a certain account and not an estimate." (Commons' Journals, April 16, 1735). In the Postage Reports of 1838 (vol. ii., App., p. 176; vol i., p. 511) are accounts showing the gross receipt, charge of management, net receipt, and rate per cent. of collection in Great Britain from 1758 to 1837, and in Scotland and Ireland from 1800 to 1837. The accounts for a few years will serve to show its progress.

## GREAT BRITAIN.

Years ended 5 April.	Gross Receipt.	Charges of Management.	Rate per cent. of Collection
	£	£	£
1758	222,075	148,345	66
1769	305,058	140,298	45
1779	402,918	263,670	65
1786	506,500	220,525	43
1799	1,012,731	324,787	32
1816	2,193,741	594,045	27
1837	2,206,736	609,220	27

The net receipt, deducting returns, was as under:—

	£	£
1758	73,730	1799 657,388
1769	164,760	1816 1,526,527
1779	139,248	1837 1,511,026
1786	285,975	

## SCOTLAND.

	1800	1837
	£	£
Gross receipts .	100,651	220,758
Charges of collection .	16,896	59,945
Net income .	83,755	160,813
Rate per cent. of collection .	16½	27

## IRELAND.

Gross receipts .	84,040	255,070
Charges of collection .	59,216	95,548
Returns deducted	24,824	134,809
Rate per cent. of collection .	70	37

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## UNITED KINGDOM.

	1837	1838
	£	£
Gross receipts .	2,462,269	2,467,216
Charges of collection .	669,940	669,756
Returns .	122,531	120,938
Net receipts	1,669,798	1,676,522
Rate per cent. of collection .	27	27

The Select Committee on Postage, in 1838, instituted a comparison of the Post-office revenue, from which it appeared that from 1815 to 1820 inclusive, on an average gross revenue, excluding repayments, of 2,190,597*l.* there had been an increase of 60,827*l.*, averaging only 3578*l.* yearly, or little more than 1½ per thousand, though the advance had been rapid in population, and still more so in wealth, industry, and trade.

*Establishment, Cost of Management, &c.*—The head of the Post-office is styled the Postmaster-General, under whose authority are placed all the post-offices in the United Kingdom and the colonies. The office was jointly held by two persons until the last few years. It is considered a political one, and the holder relinquishes it with a change of ministry; but the postmaster-general has not generally a seat in the cabinet. The Commissioners of Post-office Inquiry (4th Report) recommended that the office should be exercised by three permanent commissioners; and a Bill passed the Commons to give effect to the recommendation, but was thrown out by the Lords.

In 1835 the number of persons employed at the General Post-office, London, was 1337; the number of General-post letter-carriers was 281, and of Twopenny-post letter-carriers 464. The expenses of the office in salaries amounted to 96,234*l.* A parliamentary paper was printed in 1845, which shewed the number of persons employed in the General Post-office at that time. This return is now out of print, but it shewed that a large addition had been made to the staff of the department since 1835.

In 1831 and 1832 the chief offices of London, Dublin, and Edinburgh were

re-modelled by the Duke of Richmond, then postmaster-general. The separate office of postmaster-general for Ireland was abolished; and a secretary at Dublin and at Edinburgh is chief executive officer for the respective countries.

Constant additions are being made to the number of post-offices throughout the kingdom. In 1840, considering posts formerly called penny-posts, 'fifth-clause posts,' and sub-offices as post-offices, the following may be taken to be about the numbers:—

	Post- Offices.	Sub- Offices.	Penny- posts.	Total.
England . . .	650	190	1090	1930
Scotland . . .	220	105	230	555
Ireland . . .	330	105	200	635

Every post-office in the United Kingdom has direct communication respectively with the chief offices in London, Dublin, and Edinburgh.

The Commons' Committee, in 1838, prepared an analysis of the cost of management of the Post-office for the United Kingdom. These accounts show that about four-fifths of the charges consisted of the cost of distributing letters in the United Kingdom. Transit cost two-fifths, (£287,306*l.*), and the establishment two-fifths (288,078*l.*). The maintenance of the post between this country and the colonies and foreign countries, the inland post in certain colonies, and other charges, make up the remaining fifth. But these accounts were not altogether complete, because the expense of those packets controlled by the Admiralty was included in the Navy Estimates, and could not be separated. And as the penny stamp on newspapers was retained as a postage, about 185,000*l.* should be carried to the account of the Post-office receipts. These accounts are, of course, subject to change yearly. The transmission of the mails by railroads has added much, since the above analysis was made, to the mileage charges.

No accounts of the number of documents passing through the Post-office were kept until very lately. Founded upon a very careful examination of the best data, the numbers were estimated in 1838 to be as follows:—

Description of Letters.	Yearly Number of Letters.	Average rate per Letter.	Yearly Revenue.
		d.	£.
Packet and ship letters	3,523,572	23·15	369,340
General-post inland letters above 4 <i>d.</i>	46,378,800	9·22	1,782,191
Ditto, not exceeding 4 <i>d.</i>	5,153,200	3·5	75,151
London local-post letters	11,837,852	2·32	114,753
Country penny post letters	8,030,412	1	33,483
Total	74,923,836	7·60	2,374,923
Parliamentary franks	4,813,448	..	..
Official franks, for public purposes	2,100,010	..	..
Public statutes	77,542	..	..
Newspapers	44,500,000	..	..
Total of documents transmitted by post	126,423,836	..	2,374,923
Unappropriated	..	..	4,641

Total revenue from letters, 1837 . . . . . 2,379,564  
(See Notes to 'Postage Report,' pages 4 and 6.)

The chargeable letters in the mails leaving London were found to weigh only 7 per cent. of the whole weight of those mails. The total weight of the chargeable letters and franks carried by the thirty-two mails leaving London was only 2912 lbs. Deducting one-half as the weight of the franks and franked documents, the weight of all the chargeable letters was only 1456 lbs., being 224 lbs. less than the weight which a single mail is able to carry. The average weight of the thirty-two mails was found to be as follows:—

Average of 32 Mails.	Pounds weight.	Per centage.
Bags weighed . . . .	68	14
Letters, including franked letters and documents	91	20
Newspapers . . . .	304	65
	463	100

The management of the conveyance of the mails by sea and land is subject, of course, to those constant changes which arise out of the improvements daily taking place in the various modes of transit. Certain packets are exclusively controlled by the Admiralty, to whose charge they were removed in 1837; others still remain with the Post-office. Contracts for the conveyance of the mail-

bags to the Continent are made between the Post-office and the proprietors of certain steam-vessels. The Post-office, moreover, has the power of sending a bag of letters in any private ship.

The inland correspondence is carried on by railroads, by four-horse and two-horse coaches; by cars in Ireland, by single-horse carts, on horseback, and foot.

The number of miles travelled over in England and Scotland by the mail-coaches in 1834 was 5,911,006, and in 1839, 7,377,857. The average speed in England was  $8\frac{1}{2}$  miles per hour; greatest speed  $10\frac{1}{2}$  miles; slowest 6 miles. The average mileage for four-horse mails in England was  $1\frac{1}{2}d.$ ; and in Ireland  $2\frac{1}{2}d.$  per English mile. The system of mail-coaches owed its origin to Mr. Palmer, who, in 1784, laid a plan before Mr. Pitt, which was adopted by the government, after much opposition from the functionaries of the Post-office. Mr. Palmer found the post, instead of being the quickest, nearly the slowest conveyance in the country; very considerably slower than the common stage-coaches. The average rate of speed did not exceed three miles and a half per hour. Whilst coaches left London in the afternoon and reached Bath on the following morning, the post did not arrive till the second afternoon. Slowness was not the only defect; it was also irregular, and very insecure. The robbery of the mail was very common. Mr. Palmer succeeded in perfecting the mail-coach system, and in greatly increasing the punctuality, the speed, and security of the post and the revenue of the post-office.

*Mr. Rowland Hill's Plan.*—In 1838 Mr. Rowland Hill privately submitted to the government a plan for the improvement of the post-office, and subsequently published his views on the subject in a pamphlet under the title of 'Post-office Reform—its Importance and Practicability.' The main features of Mr. Hill's plan were—1, a great diminution in the rates of postage; 2, increased speed in the delivery of letters; and, 3, more frequent opportunities for their dispatch. He proposed that the rate of postage should be uniform, to be charged according to weight, and that the payment should

be made in advance. The means of doing so by stamps was not suggested in the first edition of the pamphlet, and Mr. Hill states that this idea did not originate with him. It originated incidentally (as stated by Mr. Hill) in a suggestion of Mr. Charles Knight to the Chancellor of the Exchequer to have a stamped penny cover for the postage of newspapers, when it was contemplated to abolish the newspaper stamps. A uniform rate of a penny was to be charged for every letter not exceeding half an ounce in weight, with an additional penny for every additional ounce. Mr. Hill discovered the justice and propriety of a uniform rate in the fact that the cost attendant on the transmission of letters was not measured by the distance they were carried. He showed on indisputable data that the actual cost of conveying letters from London to Edinburgh, when divided among the letters actually carried, did not exceed one penny for thirty-six letters.

The publication of this plan immediately excited a strong public sympathy in its favour, and especially with the commercial classes of the City of London. Mr. Wallace moved for a select committee to inquire into its merits on the 9th May, 1837, but the motion fell to the ground. In December, 1837, the government assented to the appointment of a select committee to inquire into and report upon the plan. After sitting upwards of sixty-three days, and examining Mr. Rowland Hill and eighty-three witnesses, besides the officers of the departments of the Post-office and the Excise and Stamp offices, the committee presented a most elaborate Report in favour of the whole plan, confirming by authentic and official data the conclusions which Mr. Hill had formed from very scanty and imperfect materials. In the session of 1839 the chancellor of the exchequer brought forward a Bill to enable the Treasury to carry the plan into effect, which was carried by a majority of one hundred in the House of Commons, and passed into law on the 17th of August, 1839. In the following month an arrangement was made which secured Mr. Rowland Hill's superintendence of the working out his own measure; but he was superseded by the administration

which came into office in September, 1841. On the 5th December, 1839, as a preparatory measure, to accustom the department to the mode of charging by weight, the inland rates were reduced to a uniform charge of 4*d.* per half-ounce. The scale of weight for letters advanced at a single rate for each half-ounce up to sixteen ounces. Other reductions were made in packet rates; and the London district post was reduced from 2*d.* and 3*d.* to 1*d.* This measure continued in force until the 10th January, 1840, when a uniform inland rate of postage of 1*d.* per half-ounce, payable in advance, or 2*d.* payable on delivery, came into operation. On this day parliamentary franking entirely ceased. On the 6th May stamps were introduced. The warrants of the Lords of the Treasury which authorised these changes were published in the London Gazette of the 22nd November, 28th December, 1839; 25th April, 1840. Returns have been made which show the increase of letters under the uniform-postage system. The number of letters which were actually counted for the week ending 24th November, 1839, before any changes took place, was 1,585,973 letters, including franks; for the week ending 22nd December, 1839, during the fourpenny rate, it was 2,008,687; and for the week ending 23rd February, 1840, 3,199,637. Thus the number of *chargeable* letters of all kinds increased 29 per cent. under the 4*d.* rate, and 121 per cent. (or, deducting the government letters, 117 per cent.) under the 1*d.* rate. The number of chargeable letters dispatched by the General Post increased 40 per cent. under the 4*d.* rate, and 169 per cent. (or, deducting the government letters, 165 per cent.) under the penny rate.

The gross receipts of the Post-office for the United Kingdom in the year preceding the adoption of the uniform rates of postage, and in subsequent years, are shown in the following table:—

1838	£2,346,278	1842	£1,578,145
1839	2,390,763	1843	1,535,215
1840	1,342,604	1844	1,705,067
1841	1,495,540		

The net receipts for each of the fol-

lowing years ending 10th October in each were as under:

	£.		£.
1838	1,536,000	1842	591,000
1839	1,533,000	1843	590,000
1840	694,000	1844	672,000
1841	426,000	1845	688,000

The cost of management for the year ending 5th Jan., 1839, was 686,768*l.*; and for the year ending 5th Jan., 1845, 885,314*l.* Day-mails have been established to every town of importance, and in some cases the communication by post between one town and another takes place several times a day. The mileage paid to railway companies has greatly increased, but the object for which the post-office is established has been more completely attained. Correspondence has increased with the rapidity and frequency of conveyance.

In 1839 the gross receipts of the London district post were 137,041*l.*, and in 1844 225,627*l.*; but the rates of postage (2*d.* and 3*d.*) in 1839 were uniform as it respects weight, and were lower for letters of a certain weight than under the existing system of charging in proportion to the weight.

The number of letters delivered in the United Kingdom for one week in 1839, before the establishment of the uniform rates of postage, and one week in the corresponding week of the year 1841, was as follows:—

	Week ending 24 Nov. 1839.	Week ending 21 Nov. 1841.
Country offices	764,938	2,029,370
London, inland,		
foreign, & ship.	229,292	564,481
London District	258,747	435,602
Total England		
and Wales	1,252,977	3,029,453
Ireland	179,931	403,421
Scotland	153,065	413,248
Total United Kingdom	1,585,973	3,846,122

The total number of letters delivered in the United Kingdom in the week ending Nov. 20th in each of the following years was as under:—

In 1841	3,846,122
In 1842	4,202,546
In 1843	4,349,213

The principle of cheap postage has



been applied to the transmission of money through the post-office by means of money-orders. A few years ago the cost of sending 10s. to a person 160 miles from London would have been 2s. 2d., whereas the expense would now be only 4d. including the postage. In November, 1840, the commission on money-orders was reduced from 1s. 6d. to 6d. for sums above 2*l.* and not exceeding 5*l.*; and from 6d. to 3d. for sums not exceeding 2*l.* The number of offices empowered to grant money-orders has been increased and other facilities have been granted. The consequences of these successive changes have been as follows: Number and amount of money-orders issued in England and Wales in the quarters ending—

	No.	Amount.
5 April, 1839 ..	28,838	£49,496
5 Jan., 1840 ..	40,763	67,411
5 Jan., 1841 ..	189,984	334,652
5 Jan., 1842 ..	390,290	820,576

POWER OF ATTORNEY. [LETTER OF ATTORNEY.]

PRÆMUNIRE. [LAW, CRIMINAL, p. 188; BENEFICE, p. 339.]

PREBEND (*prebenda*, from *præbeo*, a Low Latium word signifying provision or provender), the portion which the member of a cathedral or collegiate church, called a Prebendary, received in right of his place for his maintenance. It was named from the place whence the profit proceeded, which was either from some temporal lands or church preferment attached to that church, or some other church whose revenues were appropriated towards the maintenance of the member of the cathedral or collegiate church. [CANON.]

PREBENDARY (*prebendarius*). [PREBEND; BENEFICE.]

PRECEDENCE, "a going before," which explanation explains the nature of the thing. On all great and public occasions when persons come together, it is convenient to have some rule which shall determine who shall walk first or sit in the chief place, and so forth. A positive rule prevents disputes and contributes to order. In England the members of the College of Arms, who are the council of the earl-marshal of England, are usually

referred to in questions of precedence; and they have arrangement of public processions, as at royal marriages, funerals, coronations, and the like, when questions of precedence come to be considered.

There are tables of precedence in many books, and especially in those called *peerages*.

PRECEPTORY. [COMMANDERY.]

PRELATE (etymologically from *præ* and *latus*), a person *preferred* or advanced before another, but it is confined to a particular species of preferment or advancement, namely, that amongst the clergy; and it is applied to those only amongst them who have attained the very highest dignity, that of bishop or archbishop, to which we may add *patriarch*, in such churches as have an officer so denominated. The word prelate has, however in ancient times been applied to simple priests, members of the clerical body in general.

PREMIUM IN LIFE INSURANCE.

[LIFE INSURANCE.]

PREROGATIVE, a term derived from the Latin *Prærogativa*, though the modern sense of the word bears little resemblance to its original meaning. As a political term it now signifies all the powers that belong to the crown of Great Britain and Ireland, and are exercised by the king or queen regnant, either personally or by delegation to others. [KING, PARLIAMENT.]

PREROGATIVE COURT. [ECCLESIASTICAL COURTS.]

PRESCRIPTION. "No custom is to be allowed, but such custom as hath been used by title of prescription, that is to say, from time out of mind. But divers opinions have been of time out of mind, &c., and of title of prescription, which is all one in the law." (Litt. § 170.) According to this passage, "time out of mind," and "prescription," which are the same thing in law, are essential to custom: another essential to custom is usage. But there is a claim or title which is specially called prescription, and which is like custom so far as it has the inseparable incidents of time and usage; but it differs from custom in the manner in which it is pleaded, which difference shows the difference of the

right. This claim is called prescription, because the plaintiff or defendant who makes it "prescribeth that," &c.; stating, after the word "prescribeth," the nature of his claim.

The following is an example of a prescription (Co. Litt., 114, a):—"I. S., seised of the manor of D. in fee, prescribeth thus: that I. S., his ancestors, and all whose estate he hath in the sayd manor, had and used to have common of pasture time out of mind in such a place, &c., being the land of some other, &c., as pertaining to the same manor." The claim of a copyholder of a manor for common of pasture in the manor, alleges a custom time out of mind within the same manor, by which all the copyholders of the manor have had and used common of pasture in it. The claim by prescription then is properly a claim of a determinate person: the claim by custom, as opposed to prescription, is local, and applies to a certain place, and to many persons, and perhaps, it may be added, to an indeterminate number, as the inhabitants of a parish. The following definition of prescription appears to be both sufficiently comprehensive and exact:—"Prescription is when a man claimeth anything for that he, his ancestors, or predecessors, or they whose estate he hath, have had or used any thing all the time whereof no memory is to the contrary." (*T. de la Ley.*) From this definition it follows that prescription may be a claim of a person as the heir of his ancestors, or by a corporation as representing their predecessors, or by a person who holds an office or place in which there is perpetual succession; or by a man in right of an estate which he holds. It is said that certain persons, attorneys for instance, may prescribe that they and all attorneys of the same court have certain privileges; it seems indifferent whether this is called prescription or custom, but it is more consistent with the old definitions to call it prescription, since it is not a local usage, and it is by or on behalf of a determinate number of persons, that is, all the attorneys of a particular court. It is also said that parishioners may prescribe in a matter of easement, as a way to a

church-yard, but not for a profit out of land: such a prescription, however, is not contained within the above definition, and is in all respects more properly a custom.

It is essential to prescription (subject to the limitations hereinafter mentioned) that the usage of the thing claimed should have been time out of mind, continuous, and peaceable. "Time out of mind" means, that there must be no evidence of non-usage or of interruption inconsistent with the claim and of a date subsequent to the first year of Richard I., which is the time of the commencement of legal memory. If it can be shown, either by evidence of persons living, by record, or writing, or by any other admissible evidence, that the alleged usage began since the first year of Richard I., the prescription cannot be maintained. Repeated usage also must be proved in order to support the prescription, but an uninterrupted enjoyment for twenty years has been considered sufficient proof, where there is no evidence to show the commencement of the enjoyment. [PRESUMPTION.] The various rules as to prescription what may be prescribed for, in what form the claim must be made, and how a prescription may be lost or destroyed, belong to treatises on law. It is said that prescription is founded on the assumption of an original grant which is now lost.

Recent Acts have made some alterations as to prescription, and limited the time within which actions can be brought or suits instituted relating to real property. The 3 & 4 Wm. IV., c. 27, applies to every thing of a corporeal nature, which is land in the sense in which land is interpreted in that Act; but it only applies to those kinds of property of an incorporeal nature, which are advowsons, annuities, and rents. The 2 & 3 Wm. IV., c. 100, applies only to cases of modus and exemption from tithes. The 2 & 3 Wm. IV., c. 71, which is entitled "An Act for Shortening the Time of Prescription in certain cases," applies (§ 1) to "claims which may be lawfully made at the common law by custom, prescription, or grant to any right of common or other profit or benefit

to be taken from or upon any land, &c., except such matters and things as are therein specially provided for, and except tithes, rents, and services;" (§ 2) "to any way or other easement, or to any watercourse, or the use of any water," &c.; and (§ 3) to the use of light. No claim to the things comprised within this statute "shall, when such right, profit, or benefit (as is mentioned in § 1) shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by showing only that such right, profit, or benefit was first taken or enjoyed at any time prior to such period of thirty years; but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such right, profit, or benefit shall have been so taken and enjoyed as aforesaid, for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing." As to the rights enumerated in the second section, the terms of twenty and forty years are respectively fixed in the place of the terms of thirty and sixty years mentioned in the first section. Under the third section, which applies to lights, an absolute right to light may be acquired by twenty years' uninterrupted enjoyment, unless the use has been enjoyed by some consent or agreement made or given by deed or in writing. The eighth section provides "that when any land or water upon, over, or from which any such way or other convenient watercourse or use of water shall have been enjoyed or derived, hath been or shall be held under any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as therein last mentioned, during the continuance of such term, shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end or sooner determination of such term be re-

sisted by any person entitled to any reversion expectant on the determination thereof." Formerly it was necessary for all persons, who claimed in respect of an estate and had not the fee, to claim in the name of the person who had the fee, but under the last-mentioned Act "it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed, for such of the periods mentioned in the Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee, as is now usually done."

This statute applies also to "any land or water of the king, his heirs, or successors, or any land being parcel of the duchy of Lancaster or of the duchy of Cornwall."

By the common law a man might prescribe for a right which had at any time been enjoyed by his ancestors or predecessors; but the statute of 32 Hen. VIII. c. 2, enacted that no person should "make any prescription by the seisin or possession of his ancestor, unless such seisin or possession hath been within threescore years next before such prescription made." This statute prevented any claim being made by prescription unless there had been seisin or possession within sixty years; but it still allowed the commencement of the enjoyment at any time within legal memory before the sixty years to be proved. The recent Act directs that "the respective periods of years thereinbefore mentioned shall be deemed to be the period next before\* some suit or action wherein the claim or matter to which such period may relate shall be brought into question" (§ 4); but it only excludes proof of commencement of enjoyment, and it only gives the absolute right, when the several periods of years, reckoning backwards from the time of some suit or action wherein the matter is brought in question, are completed; and it neither excludes the proof nor gives the absolute right if there has been an interruption, within the meaning of this statute, which has been submitted to or acquiesced in "for one year after the party interrupted

\* Richards v. Fry, 7 A. & E., 698

shall have had notice thereof, and of the person making or authorising the same." In these cases, if there has been seisin or possession of the ancestor or predecessor within sixty years, the statute of Henry VIII. will still apply, and evidence of the commencement of enjoyment within legal memory may still be given.

The Acts here enumerated do not apply to a claim "of a manor, a court-leet, a liberty, separate jurisdiction, treasure trove, wreck, waifs, and other forfeitures, fair, market, fishery, toll, park, forest, chase, or any privilege legally known as a franchise, as well as anything pertaining to those rights which come under the description of dignities or offices." (Mr. Hewlett's *Reply, &c., to certain Evidence before the Select Committee of the House of Commons on Records, February, 1835.*)

The term prescription is derived from the Roman law, but the meaning of the term in the Roman law is different. Blackstone says (iii. c. 17, note F.), "This title of prescription was well known in the Roman law by the name of usucapio (*Dig.*, 41, tit. 3, s. 3), so called because a man that gains a title by prescription may be said *usu rem capere*." This remark is not correct. Usucapio in the Roman law was founded solely on possession as such [POSSESSION], and it applied only to "corporeal things;" "by the laws of the Twelve Tables usucapion of moveable things was complete in one year; and of land and houses in two years." (Gaius, ii. 42.) "To usucapion was afterwards added, as a supplement, the *longi temporis præscriptio*, that is, an exceptio (plea) against the "*rei vindicatio*," the conditions of which were nearly the same as in the case of usucapion." (Savigny, *Das Recht des Besitzes*, p. 6.) The term *præscriptio* was properly applied to that which a plaintiff (actor) prefixed (*præscriptit*) to the formula by which he made his demand against a defendant, for the purpose of limiting or qualifying his demand. It seems afterwards to have been used as equivalent to exceptio or plea.

(Conyns, *Prescription*; Viner's *Abridgment*; Starkie, *Law of Evidence*; Blackstone, ii. c. 17.)

PRESCRIPTION has, by the law of

Scotland, a much wider operation than either by the civil law or the law of England, supplying the place of the Statute of Limitations in the latter system. It not only protects individuals from adverse proceedings which other parties might have conducted if the lapse of time had not taken place, but it in some instances creates a positive title to property. The prescription by which a right of property can be established is that of forty years—a period probably borrowed from the *Praescriptio quadraginta annorum* of the Romans. Whatever adverse right is not cut off by the other special prescriptions of shorter periods, is destroyed by the *long* prescription. It may be said generally to preclude the right of exacting performance of any claim, as to which no judicial attempt has been made to exact performance for forty years from the time when it was exigible. To create a title to real property, the long prescription must be both positive and negative. The party holding the property must, by himself or those through whom he holds, have been forty years in unchallenged possession of the property on a title ostensibly valid—this is called positive prescription; and the claimant and those whom he represents must have been forty years without an ostensible title, and must, by not judicially attacking it, have tacitly acquiesced in the possessor's title—this is called negative prescription. An action raised in a competent court interrupts the long prescription. It is usually stated in the Scottish law-books that it is interrupted by the minority of any person who could challenge the opposing right; but it would be more correct to apply in this case the phraseology of the French lawyers, who say it suspends prescription, as the years of minority are merely not counted in making up the period of forty years, while, when there is a judicial interruption, a new period of forty years commences to run. When the prescription applies to a pecuniary obligation, payment of interest or an acknowledgment of the obligation will interrupt it. It may be observed that, by a sort of analogy from the system of prescription, when there

is in Scotland any judicial inquiry as to the antiquity of a custom, it is usual to limit the period of the inquiry to forty years, as sufficient to establish its having existed from time immemorial. It having been the practice in the neighbourhood of Edinburgh for the proprietors of land to irrigate fields with the contents of the city sewers—the system increasing until it became offensive to the neighbourhood—these proprietors produced evidence of their having continued the practice for forty years; and although it had during that time increased from an evil felt only by the individuals immediately concerned with the practice, to the extent of a public nuisance, these proprietors have, so far as the dispute has hitherto gone, been able to defend themselves on the ground of prescription.

The other and shorter prescriptions cut off particular descriptions of claims or methods of supporting them. By the vicennial or twenty years' prescription, holograph writings, not attested with the usual solemnities of Scottish writs, cease to "bear faith in judgment." An obligation of cautionary or suretyship is limited to seven years. Bills of exchange and promissory notes cease to have force after six years; but the debts they represent, if they do represent debts, may be proved by other means. The quinquennial prescription cuts off all right of action, after the lapse of five years, on bargains proveable by witnesses. It also protects agricultural tenants from a demand for rent after they have been five years removed from the land to which the demand applies. The triennial, or three years' prescription, is very important. It cuts off claims on account for goods or services, the three years running from the date of the last item of the account; and also claims for wages, each year's wages running a separate prescription, and ceasing to be exigible, if not pursued for, in the lapse of three years from the time when it became due.

**PRESENTATION.** [ADVOWSON; BENEFICE.]

**PRESENTMENT.** [JURY; POLICE.]

**PRESS, CENSORSHIP OF,** a regulation which has prevailed in most countries of Europe, and still prevails in many, according to which printed books, pamph-

lets, and newspapers, are examined by persons appointed for the purpose, who are empowered to prevent publication if they see sufficient reason.

There are different modes of censorship; the universal previous censorship, by which all MSS. must be examined and approved of before they are sent to press; the indirect censorship, which examines works after they have been printed, and, if it finds anything objectionable, stops their sale and confiscates the edition, and marks out the author or editor for prosecution; the optional censorship, which allows an author to tender his MS. for examination in order to be discharged from all responsibility afterwards; and lastly, by a distinction which has been very commonly made between newspapers or pamphlets and works of a greater bulk, the censorship of the journals, which exists even in countries where larger works are free from this superintendence. All these forms of censorship imply an establishment of censors, examiners, inspectors, or licensers, as they have been variously called, appointed for the purpose, a provision quite distinct from the laws which define the various offences which a man may be guilty of by publication. These are repressive or penal laws, whilst the censorship, and especially the previous censorship, is essentially a preventive regulation.

The censorship may be said to be coeval with printing. In more ancient times, those writings which were obnoxious to the prevailing political or religious systems, if they fell under the eyes of men in authority, were condemned to be destroyed. Thus, all the copies of the works of Protagoras which could be found in Athens were publicly burnt by sentence of the Areopagus, because the author expressed doubts concerning the existence of the gods. Personal defamation and satire were also forbidden. Naevius at Rome was banished, some say put in prison, for having, in his plays, cast reflections on several patricians. Augustus ordered the satirical works of Labienus to be burnt, and Ovid's alleged or probable cause of exile was his amatory poetry. The senate under Tiberius condemned a work to be burnt, in which Cassius was

styled the last of the Romans. Diocletian ordered the sacred books of the Christians to be burnt, and afterwards Constantine condemned the works of Arius to the flames. All these, however, were penal proceedings independent of any censorship. The councils of the Church condemned books which they judged to be heretical, and warned the faithful against reading them. Afterwards the popes began to condemn certain works and prohibit the reading of them. In the time of Huss and Wycliff, Pope Martin V. excommunicated those who read prohibited books. The introduction of printing having awakened the fears of the ecclesiastical authorities, several bishops ordered books to be examined by censors. One of the earliest instances of this is that quoted by Johann Beckmann, in his 'Book of Inventions,' of Berchthold, Archbishop of Mainz, who in the year 1486 issued a mandate, in which, after censuring the practice of translating the sacred writings from the Latin into the vulgar German, a language, he says, too rude and too poor to express the exact meaning of the inspired text, he adverts to the translations of the books of the canon and civil law, works, as the archbishop says, so difficult as to require the whole life of man to be understood, a difficulty which is now increased by the incompetence of the translator, which renders obscurity still more obscure. His grace, therefore, setting a full value on the art of printing, "which had its cradle in this illustrious city of Mainz," and wishing to preserve its honour by preventing it being abused, forbids all persons subject to his authority, clerical and lay, of whatever rank, order, and profession, to print the translation of any work from the Greek, Latin, or any other language, into German, concerning any art, science, or information whatever, publicly or privately, unless such translation be read and approved of before being printed, and, when printed, before being published, and furnished with the written testimony of one of the doctors and professors of the University of Mainz, named by the archbishop, one for theology, one for law, one for medicine, and one for the arts. All who violated this order were to lose the book, pay a fine of one hundred

gold florins to the Electoral Chamber, and be excommunicated.

Then follows the archbishop's commission to the censors—That no one in his province translate, print, or publish, any book in German, unless the censors previously read and approve its contents. And he directs them to refuse their approbation to such works as offend religion or morals, or whose meaning cannot clearly be made out, and may give rise to error and scandal. To those works which they approve of they shall affix their approbation, two of them jointly, in their own handwriting.

There were works printed at Cologne in 1479 bearing the approbation of the rector of that university, and there is also an Heidelberg edition of 1480 of the book entitled 'Nosce teipsum,' which bears four approbations, one by Philip Rota, Doctor utriusque Juris, and another by Maffeus Girardo, Patriarch of Venice and Primate of Dalmatia. There was, however, no general system of censorship in the fifteenth century, which was an age of freedom for printing; and it is a curious fact that the learned scholar Merula, in a letter to his friend Poliziano, dated 1480, expresses a wish that a previous censorship should be established over all books, such as Plato recommends for his republic; "for," says Merula, "we are now quite overcome by a quantity of bad or insignificant books."

In 1501, Pope Alexander VI. (Borgia) issued a bull, in which, after sundry complaints about the devil who sows tares among the wheat, he goes on to say that having been informed that by means of the art of printing many books and treatises, containing various errors and pernicious doctrines, have been and are being published in the provinces of Cologne, Mainz, Treves, and Magdeburg, he by these presents strictly forbids all printers, their servants, and all who exercise the art of printing in any manner, in the above provinces, to print hereafter any books, treatises, or writings, without previously applying to the respective archbishops, or their vicars and officials, or whomever they may appoint for the purpose, and obtaining their licence free of all expense, under pain of excommunica-

tion, besides a pecuniary fine at the discretion of the respective archbishops, bishops, or vicars-general. The bull provides for the books already printed and published, which are to be examined by the same authorities, and those containing anything to the prejudice of the Catholic faith are to be burnt.

At last, in 1515, the Council of the Lateran decreed that in future no books should be printed in any town or diocese, unless they were previously inspected and carefully examined, if at Rome by the vicar and the master of the sacred palace, and in the other dioceses by the bishop or those by him appointed, and by the inquisitor of that diocese or those by him appointed, and countersigned by their own hands gratis and without delay. Any book not so examined and countersigned was to be burnt, and the author or editor excommunicated.

Here, then, was the origin of the principle of a general censorship of the press, which has been ever since maintained by the Church of Rome in all countries where it had power to enforce it. The bishops were the censors in their respective dioceses; but the tribunal of the inquisition, wherever the inquisition was established, were the censors; they examined the MS. of every work previous to its being printed, and granted or refused an 'Imprimatur' or licence at their pleasure. The inquisition moreover sought after all books published beyond its jurisdiction, and having examined their contents, condemned those which were contrary to the doctrine or discipline of the Church of Rome, and of these it formed a list known by the name of 'Index of Forbidden Books,' to which it has made copious additions from time to time. There are several of these indexes, made at different times and in different places: the index of the Spanish Inquisition was different from that of Rome. Collections of these indices have been made. One of the latest is contained in the '*Dictionnaire Critique et Bibliographique des principaux Livres condamnés au Feu, supprimés ou censurés,*' by Peignot, Paris, 1806. In countries where the Inquisition was not established, such as France, England, and Germany, the bishops acted as

censors and licensers of books, which they examined previous to printing, as to all matters concerning religion or morality. The censorship continued for a long time to belong to the ecclesiastical power, and even afterwards, when the civil power in various countries began to appoint royal censors to examine all kinds of works, the episcopal approbation was still required for all books which treated of religion or church discipline.

The Reformation greatly modified the censorship and reduced its powers, without, however, abolishing it; the power passed into other hands. In England the practice seems to have been to appoint licensers for the various branches of learning; but the bishops monopolized the principal part of the licensing power, as we find at the beginning of the reign of Charles I. in a petition of the printers and booksellers to the House of Commons, complaints against Bishop Laud that the licensing of books being wholly confined to him and his chaplains, he allowed books which favoured Popery to be published, but refused licensing those which were written against it. And Archbishop Abbot observed of Laud's licensing, "it seemed as if we had an expurgatory press, though not an index like the Romanists, for the most religious truth was expurgated and suppressed in order to the false and secular interests of some of the clergy." The system of previous licensing, however, did not always secure an author from subsequent responsibility. Thus Prynne's '*Histrionastix*' was condemned in 1636 to be burnt by the hangman, for being a satire on the royal family and government, and the author to have his ears cut off, and to be imprisoned and heavily fined, although the book had actually been licensed, but it was alleged on the trial that the licenser had not read the whole of the work.

A decree of the Star Chamber concerning printing and licensing, dated 11th of July, 1637, was issued in order to establish a general system on the subject. The preamble refers to former decrees and ordinances for the better government and regulating of printers and printing, and particularly to an order of the 23rd of June, in the 28th year of

Elizabeth, "which orders and decrees have been found by experience to be defective in some particulars, and divers libellous, seditious, and mutinous books, have been unduly printed, and other books and papers without licence." The decree enacts among other things that "no person or persons shall at any time print or cause to be printed any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed and authorised only by such person and persons as are hereafter expressed, and by no other, and shall be also first entered into the registrar's book of the Company of Stationers, upon pain that every printer offending therein shall be for ever hereafter disabled to use or exercise the art or mystery of printing, and receive such further punishment as by this Court or the High Commission Court respectively, as the several causes shall require, shall be thought fitting." It then goes on to provide that all books concerning the common laws of the realm shall have the special approbation of the Lord Chief Justices and the Lord Chief Baron for the time being, or one or more of them, or by their appointment; that all books of history or any other book of state affairs shall be licensed by the principal secretaries of state, or one of them, or by appointment; and that all books concerning heraldry, titles of honour and arms, or otherwise concerning the office of earl-marshal, shall be licensed by the earl-marshal or by his appointment; "and further that all other books, whether of divinity, physicks, philosophy, poetry, or whatsoever, shall be allowed by the Lord Archbishop of Canterbury or Bishop of London for the time being, or by the chancellors or vice-chancellors of either of the universities of the realm, for such books that are to be printed within the limits of the universities respectively, not meddling either with books of the common law or matters of state. And it is further enacted that every person and persons,

which by any decree of this court are or shall be appointed or authorised to licence books or give warrant for imprinting thereof, as is aforesaid, shall have two several written copies of the same book, one of which shall be kept in the public registry of the respective licenser, to the end that he may be secure that the copy so licensed shall not be altered without his knowledge, and the other copy shall remain with the owner, and upon both the said copies he or they that shall allow the said book shall testify under his or their hand or hands, that there is nothing in the book contrary to the Christian faith and the doctrine and discipline of the Church of England, nor against the state or government, nor contrary to good life or good manners, or otherwise, as the nature and subject of the work shall require, which testimony shall be printed in the beginning of the book with the name of the licenser. All books coming from beyond the seas were to be reported by the merchant or consignee to the Archbishop of Canterbury or the Bishop of London, and to remain in custody of the custom-house officers until the Archbishop or Bishop sent one of their chaplains or some other learned man to be present with the master and wardens of the Company of Stationers, or one of them, at the opening of the bale or package, for the purpose of examining the books therein contained. And if there is any seditious, schismatical, or offensive book found among them, it was to be brought forthwith to the Archbishop of Canterbury or the Bishop of London, or the High Commission Office, to be dealt with accordingly." All books, ballads, charts, and portraits were to bear the name of the printer or engraver as well as of the author or maker. All printers were to take out a licence. Their number was fixed and their names were published.

The war between Charles I. and the Parliament, and the abolition of the royal authority, did not affect the censorship, and the Long Parliament in the plenitude of its power maintained the practice just as the Star Chamber had done.



In March, 1642, an order of the Commons House of Parliament appointed by name certain stationers of London to search for any lying pamphlets scandalous to his majesty, or the proceedings of both or either House of Parliament, demolish and take away the printing-presses, and apprehend the printers or sellers.

In June, 1643, was issued an order of the Lords and Commons assembled in Parliament for the regulating of printing, and for suppressing the great late abuses and frequent disorders in printing many false, scandalous, seditious, libellous, and unlicensed pamphlets, to the great defamation of religion and government. It enacts that no book, pamphlet, paper, nor part of any such book, pamphlet, or paper, shall from henceforth be printed, bound, stitched, or put to sale by any person or persons whatever, unless the same be first approved of and licensed under the hands of such person or persons as both or either of the Houses of Parliament shall appoint for the licensing of the same, and entered into the register-book of the Company of Stationers, according to ancient custom. And further on it authorises or requires the master and wardens of the said company, the gentleman usher of the House of Peers, the sergeant of the Commons' House and their deputies, together with the persons formerly appointed by the committee of the House of Commons for examination, to make from time to time diligent search in all places where they shall think meet, for all unlicensed printing-presses, and all presses any way employed in printing of scandalous or unlicensed papers, pamphlets, books, &c., and to seize, deface, and destroy the same in the Common Hall of the said company.

It was in consequence of this order that John Milton wrote his 'Areopagitica; a Speech for the Liberty of Unlicensed Printing,' addressed to the parliament of England, in which he shows that the system of licensing originated with the Papal Inquisition, and that it ought not to be adopted by a Protestant community: he points out its uselessness and injustice, and observes that the order of

parliament is only a revival of the former order of the Star Chamber. Milton's disquisition is a piece of close reasoning and eloquently written, but it had no effect upon parliament, which continued to sanction the restraints upon the press, even after the abolition of royalty. A warrant of the Lord-General Fairfax, dated 9th of January, 1648, was addressed to "Captain Richard Lawrence, Marshal-General of the Army under my command," in virtue of an order of parliament, dated 5th of January, 1648, to put in execution the ordinances of parliament concerning scandalous and unlicensed pamphlets, and especially the ordinance of the 28th September, 1642, and the order of the Lords and Commons, dated 14th June, 1643, for the regulating of printing. The marshal-general of the army is "required and authorised to take into custody any person or persons who have offended or shall hereafter offend against the said ordinances, and inflict upon them such corporal punishments, and levy such penalties upon them for each offence as therein mentioned, and not discharge them till they have made full payment thereof, and received the said punishment accordingly." And he is further authorised and required to make diligent search "from time to time, in all places wherein he shall think meet, for all unlicensed printing-presses any way employed in printing scandalous and unlicensed papers, pamphlets, books, or ballads, and to search for such unlicensed books, papers, treatises, &c."

The parliament of 1654 appointed a committee to watch all blasphemous publications, on whose reports several books, religious or controversial, were ordered to be burnt.

The parliament of 1656 appointed a committee to consider the way of suppressing private presses and regulating the press, and suppressing and preventing scandalous books and pamphlets. The Protector Cromwell enforced these restraints in order to prevent the agitation of political questions. In October, 1653, the council at Whitehall ordered that no person shall presume to publish in print any matter of public news or

intelligence, without leave and approbation of the secretary of state. There appeared also an order of the protector and council against printing unlicensed and scandalous books and pamphlets, and for regulating printing. Cromwell however was disposed in general to rescue the victims of religious intolerance from the hands of their persecutors, the Independents and the Presbyterians.

After the Restoration, Roger Lestrange was appointed licenser of printing. He wrote in 1663, 'Considerations and Proposals in order to the Regulation of the Press.' Lestrange seems to have retained his office till the revolution of 1688, when he was succeeded by Fraser, who, it was said, was shortly after removed from his office for having allowed Dr. Walker's 'True Account of the Author of Eikon Basilike' to be printed. Edmund Bohun, a Suffolk justice, was appointed in Fraser's place. In a pamphlet printed in London in 1693, entitled 'Reasons humbly offered for the Liberty of Unlicensed Printing; to which is subjoined the just and true Character of Edmund Bohun, the Licensor of the Press, in a Letter from a Gentleman in the Country to a Member of Parliament,' there is a specimen of Bohun's licences: "You are hereby allowed to print and vend a certain book, . . . . ., and for so doing this shall be your sufficient warrant. E. B."

The act passed under Charles II., in 1662, which was, with few alterations, a copy of the Parliamentary ordinances concerning the licensing of printing, expired in 1679, but was revived by statute 1 Jac. II. c. 17, and continued till 1692. It was then continued for two years longer by statute 4 William and Mary, c. 24, and it expired in 1694, when the licensing system was finally abolished in England; but the question of its revival was repeatedly agitated in parliament, as we see by a paper dated 1703, entitled 'Reasons against restraining the Press,' which deprecates the intention of reviving the licensing system; and by a much later and bolder pamphlet dated 1729, styled, 'Letter to a Great Man concerning the Liberty of the Press.'

Under the old French monarchy, all

works previous to being printed were to be examined by the royal censors; and if approved, were signed with their permission. The French censorship was originally in the hands of the bishops, for all matters concerning religion and ecclesiastical discipline. By degrees the bishops delegated this power to the faculty of theology, and the Parliament of Paris sanctioned the practice. The manuscripts were laid before the faculty, which appointed two doctors of divinity to examine them. The doctors made their report to the general assembly of the faculty, which approved or rejected the work. Prelates themselves were not exempt from this rule. The learned Cardinal Sadoletto, while Bishop of Carpentras, was refused permission to print a commentary which he had written on the Epistle of Paul to the Romans in 1532: Cardinal Sanguin was likewise refused permission to publish a work in 1542. As at that time a number of heterodox books were pouring into France from abroad, the Parliament of Paris, by a decision of the year 1542, authorised the faculty of theology to examine all books imported from foreign countries. Towards the beginning of the following or seventeenth century, the great increase and accumulation of new books having induced the examining doctors to omit their reports to the assembly of the faculty, the assembly issued an order to the said examiners not to give their approbation to new works without mature consideration, under penalty of suspension from their office. In 1624 the faculty itself being divided into parties on some matters of controversy, Dr. Duval, the leader of one of the parties, obtained the king's letters patent for himself and three of his colleagues, by which they obtained the exclusive authority of approving all books concerning religion and church discipline. The faculty remonstrated against this innovation, but the king maintained his appointment. After Duval's death, the faculty resumed its old powers; but in 1653, the controversy concerning grace having given birth to a multitude of polemical works, concerning which the faculty itself was divided

in opinion, the chancellor Seguier took from it the censorship; and he created four censors, with an annual stipend, to examine all works without distinction. Before that time it appears that works unconnected with religion were examined by the *Maîtres des Requêtes*. But ever since 1653, the appointment of the censors rested with the chancellor. They were styled Royal Censors, and their number was gradually increased. They were distributed into seven classes, according to the nature of the works which they had to examine, namely, theology, jurisprudence, natural history and medicine, surgery, mathematics, history and belles lettres (which class had the greatest number of censors attached to it); and lastly, geography, navigation, travels, and engravings. No work could be printed or sold unless it was previously examined and approved by one of the Royal Censors. The lieutenant of police had under him a censor who examined all dramatic works, before they could be performed.

At the Revolution the censorship was abolished. The republican constitutions which were proclaimed in succession acknowledged the principle of the liberty of the press, but amidst the struggle of parties, that principle was often overlooked, and journals and other works obnoxious to the ruling faction of the day were seized, and the authors or editors imprisoned or transported. Throughout the whole period of the so-called French Republic, liberty existed in name, but not in reality; and it was the experience of this that made people acquiesce in Bonaparte's dictatorship. After the revolution of Brumaire, when Bonaparte was proclaimed First Consul of the French Republic, with powers more extensive than most kings, the question of the press attracted his early attention. He said one day in the Council of State, that the character of the French nation required that the liberty of the press should be limited to works of a certain size; but newspapers and pamphlets ought to be subject to the strict inspection of police. No censorship was established by the Consular constitution, but the newspaper press was left

at the mercy of the executive. By a decree of the 27th Nivose, 1800, the number of newspapers at Paris was fixed, and the editors were forbidden to insert any article "derogatory of the respect due to the institutions of the country, the sovereignty of the people, and the glory of the French armies," or offensive to the governments and nations which were the friends and allies of France, even if such articles should be extracted from foreign journals, under pain of immediate suppression. The *Moniteur* was announced to be the only official journal. The *Ami des Lois* was suppressed on the 3rd Prairial, 1800, by the order of the Consuls on the report of Lucien Bonaparte, Minister of the Interior, for having thrown ridicule on the members of the Institute. Under such discipline the number of subscribers to the newspapers of Paris dwindled rapidly from 50,000 to less than 19,000, and the *Moniteur* inserted the statement as a subject of congratulation. The Minister of the Interior had the censorship of dramatic compositions before they could be brought on the stage.

Napoleon was not friendly to liberty of any kind, and still less to that of the press. He felt very sore at the jibes and sarcasms of the English journals, which he had translated to him; and he insisted that no word, however offensive, should be omitted. When the organic law was discussed in the Senate, which was to declare him Emperor, some one spoke of guarantees to be given to the nation, and mentioned the liberty of the press among the rest. Napoleon contented himself with appointing a committee in the Senate with the nominal office of protecting the liberty of the press, which was both a misnomer and a sinecure.

In 1806 there appeared an instance of renewed book-licensing. A drama of Collin d'Harleville, making part of the series of his works, bore the following licence: 'Seen and allowed to be printed and published, by decision of his Excellency the Senator Minister of the General Police, dated 9 Prairial, year XIII. By order of his Excellency the chief of the department of the liberty of the press, P. Lagarde.' The *Journal of the Empire*

inserted this novel document in its columns; upon which the official *Moniteur* observed, in a tone of ill humour, that the Emperor had been surprised to learn that an estimable writer like M. d'Harleville should need permission to publish a work bearing his name; that there existed no censorship in France; that any French citizen could publish any book that he thought proper, being responsible for its contents before the tribunals, and pursuant to a decree of his Majesty, if charged with any thing derogatory to the power of the Emperor and the interests of the country.

In Napoleon's kingdom of Italy the censorship was likewise declared to be abolished, but on the day of the publication of a work two copies were to be deposited at the office of the Minister of the Interior. A commission, styled likewise "of the liberty of the press," examined the book and made its report to the Minister, who, if he saw reason, stopped the sale of the work, and ordered the author or printer to be arrested and tried. Those who wished to avoid such risks, were allowed to lay their MS. before the commission, which returned it with such corrections or suppressions as it thought advisable. This was called the facultative or optional censorship.

At last, in 1809-10, the project of a definitive law concerning the press in France became the subject of frequent discussions in the Council of State, in which Napoleon took a part. "I conceive," said he, "the liberty of the press in a country where the government is acted upon by the influence of the public opinion, but our institutions do not call upon the people to meddle with political affairs; it is the business of the Senate, the Council of State, and the Legislative Body, to think, speak, and act for the people, and the liberty of the press would not be in harmony with our system, for the manifestation of the power of public opinion would only be productive of disturbance and confusion." On the question of the censorship the more liberal councillors of state argued in favour of the optional censorship, by which authors who of their own accord laid their works before the censors, should be relieved

from further responsibility after publication. "Those councillors who were for a previous and obligatory censorship, such as Cambacérès, Molé, Pasquier, Portalis, and Regnier, maintained that writing for publication was a species of teaching, and that in a country like France, where public instruction was so organized and regulated as not to be permitted to spread any dangerous doctrine, it would be inconsistent to allow writers to assume uncontrolled the mission of teaching whatsoever they pleased. No mode of teaching or influencing the public mind ought to escape the vigilance of the authority of the state. Under every government, those who addressed publicly a certain number of persons were watched; *à fortiori*, those who by their writings addressed themselves to all men, ought to be watched also. It had been said erroneously that the right of publishing was a natural faculty; the art of printing is a social invention, and as such is subject, like all other inventions, to administrative regulations in order to prevent its being abused. Without the previous censorship, the suppression of a mischievous book after publication came too late." (Sittings of the Council of State of the 11th and 25th of October, 1809, in Thibaudau, *Histoire de la France et de Napoléon*, ch. 67.) Napoleon was not for the obligatory and previous censorship, because it might find itself placed in an awkward dilemma, especially with regard to certain books which appeared to have a sceptical or heterodox tendency. He preferred the optional censorship, leaving however to the proper authorities the power of stopping the printing or seizing the printed copies of any work which they thought dangerous. He was inexorable towards offences against the state. The decree of February, 1810, which was the result of these discussions, appointed a director-general of the press, with auditors, inspectors, and censors, under the control of the Minister of the Interior. The number of printers was to be fixed in every department; sixty was the number fixed for Paris: printers as well as booksellers were to take licences and swear fidelity to their country and the Emperor. Printers were forbidden to print anything

derogatory of the duties of subjects towards their sovereign, or of the interests of the state. Parties offending were to be brought before the courts, and punished according to the Penal Code; besides which the Minister of the Interior had the right of depriving the printer of his licence. Before setting up a work, the printer was to transmit the title of it, with the name of the author, if known, to the director-general, and likewise to the prefect of the department, declaring his intention to publish the work. The director-general could, if he chose, ask for the MS., and send it to one of the censors for examination. After the censor had made his report, the director would point out such alterations or suppressions in the text as he thought proper, and which became obligatory upon the author or printer, who however had the right of appealing to the Minister of the Interior, who forwarded the MS. to another censor, who made his report to the director-general, and the director-general, assisted by other censors, decided finally upon the matter.

Authors or printers had the option of submitting their MSS. to the examination of the censors previous to printing. But even after being examined, approved, and printed, a work could be seized and its sale stopped by the minister of police, who was however to forward it with his remarks, within twenty-four hours, to the Council of State, which judged finally upon it. A well known instance of this occurred with regard to Madame de Staël's book on Germany, which was seized after having been examined and printed, and the whole edition was destroyed. "Your book is not French, and we are not reduced to seek for models among the nations which you admire," was the minister of police's (Savary) reply to Madame de Staël's remonstrances on the subject.

Books printed abroad could not be imported into France without permission from the director-general.

The police had the censorship of dramatic works intended for the stage. Only one newspaper was allowed in each department, with the exception of Paris, subject to the approbation of the respective prefect. Such was the condition of the

press in France during the latter years of Napoleon's empire.

At the first restoration of the Bourbons, in 1814, an article of the Charter of Louis XVIII. acknowledged that "Frenchmen had the right of publishing their opinions by means of the press, conformably however to the laws enacted for the repression of any abuse of the liberty of the press." Soon after, the Abbé de Montesquiou, Minister of the Interior, laid before the chambers the project of a law concerning the press, the effect of which would have been nearly to destroy its freedom. He proposed that all works of less than thirty sheets were to be subject to a previous censorship (*censure préalable*), excepting those in the dead or foreign languages, bishops' charges, pastoral letters, and catechisms and prayer-books, and memoirs of literary and scientific societies. This project was examined by a commission of the chamber, which rejected in its report the previous censorship. The article eight of the charter said that the law should *repress* the abuse of the liberty of the press, but the ministerial project by its previous censorship tended to *prevent* it by suppressing the liberty altogether. The discussion was warm. Montesquiou maintained that to prevent and to repress were synonymous. He at last agreed to exempt from the previous censorship all works of twenty sheets and above, instead of thirty. With this modification the bill passed both houses by considerable majorities. A council of twenty censors was appointed. The office of director-general of the press was retained. Every printer was obliged to give notice of each work that he intended to print, and to deposit two copies of it, when printed, at the director's office, before he published the work.

When Napoleon returned from Elba, in 1815, he did not enforce the previous censorship, because, said he, they had published whatever they pleased against him under the Bourbons, and the matter was now exhausted. The other regulations however concerning printing and publishing were maintained, and the press and the emperor were often at variance during the hundred days. The previous censorship was temporarily re-established

and abolished again under the second restoration of Louis XVIII. After Charles X. came to the throne, he abolished the previous censorship altogether, and by so doing he gained a momentary popularity with the Parisians. But the press, and especially the newspaper press, did not show any great extent of gratitude for the boon, for it proved throughout his reign a sharp thorn in his side, as may be seen by the famous report of his ministers, upon which report the ordinances of July, 1830, were passed. That report was attributed to M. Chantelauze, the keeper of the seals, but it was signed by all the ministers. It contains an able, an eloquent, and, in the main, a true exposition of the crafty and persevering course of conspiracy by which the press was constantly exciting or feeding a determined hostility towards the king and his government, casting suspicion upon and misrepresenting all their acts, even those which were evidently beneficial and liberal, because they proceeded from persons whom the press itself had rendered unpopular, appealing to the passions and prejudices of a susceptible and uninstructed multitude, and thus rendering, in fact, government impossible. This report is a very interesting historical document, and ought to be read by those who wish to form a dispassionate judgment of the press, and its powers for good and evil. "At all times," said the minister, "the periodical press had been, as it was in its nature to be, an instrument of disorder and sedition." Accordingly the first of the ordinances of Charles X., signed the 25th of July, suspended the liberty of the periodical press; no journal was to be henceforth published without a special authorization of the government, which was to be renewed every three months. All pamphlets or works under twenty sheets of letter-press were made subject to the same authorization. The ordinances however were resisted, and the revolution of July was the result. The revised charter which was afterwards promulgated, 'Charte de 1830,' in its seventh article, says: "Frenchmen have the right of publishing and printing their opinions, conformably to the laws. The censorship shall never be re-estab-

lished." New laws however were enacted to repress the abuses of the press, among which the law of the 9th of September, 1835, is, we believe, the latest. It embodies or refers to many of the former laws of the Empire and the Restoration. It specifies the crimes and misdemeanors committed by means of the press, and assigns the penalty to each. The proprietors of political journals are obliged to deposit a considerable sum in the treasury as a security for their good behaviour. One hundred thousand francs (four thousand pounds sterling) is the deposit required for a daily Paris newspaper, and one half the sum for a weekly paper.

There is a material difference, in all the constitutions which have been framed for France, and for other countries on the model of France, between the abstract constitutional principle, such as liberty of the press, individual liberty, &c., and its application as modified by the various codes of laws, which are chiefly those of Napoleon. However, the press is certainly more free in France than it was under Napoleon or the old monarchy, but it is still far from having attained the wide uncontrolled freedom of the press in England, which may be truly said to be the freest in the world. The surest method of convincing oneself of this would be to pick out two or three of the more ultra-liberal English or Irish papers and examine them according to the existing laws in France, which constitute what is called the 'Code de la Presse,' noticing how often they would be found to have offended against the provisions of that code, and what penalties they would have incurred for each offence. The penalties in the French code of the press are very severe.

The absolute monarchies of Europe, Russia, Austria, Prussia, and the Italian States, retain the obligatory previous censorship of the press, which is derived from the very principle of their government, that of parental authority over their subjects. In some of the Italian States there is a double censorship; one by an ecclesiastical and the other by a political censor. But even then it happens sometimes that after a work has passed the cen-

ensorship and obtained the "inprimatur," something obnoxious is discovered which had escaped the censor's penetration, and the book is seized and confiscated.

In the republics of Switzerland, the censorship existed before the organic changes which have taken place in most of the cantons since 1830. All previous censorship is now abolished, but the laws in some of the cantons are very restrictive of the liberty of the press, and especially of the newspaper press, on matters of religion. Generally speaking the press is freest in the Protestant cantons.

By the last Spanish constitution, of 1837, art. 11, "All Spaniards may print and publish their thoughts freely, without previous censorship, but subject to the laws. The determination of offences by means of the press belongs exclusively to juries empannelled for that purpose."

The constitution of Portugal establishes no previous censorship, but refers to the laws for repressing the abuses of the press.

By the constitution of the kingdom of Greece of 1827, "the Hellenes have the right of publishing freely their thoughts by means of the press, abstaining however—1, from attacking the principles of the Christian religion; 2, offending decency and morality; 3, indulging in personal insult and calumny."

The Swedish constitution of 1809, promulgated under King Charles XIII., enacts that the states of the kingdom in every new Diet shall appoint a committee of six members, well informed persons, among whom must be two jurists, for the purpose of maintaining the liberty of the press. The committee will examine all MSS. which shall be laid before it by any author or bookseller, and if the committee declares that the work is fit to be printed, the author and publisher are thenceforth discharged from all further responsibility. The Chancellor of Justice of the State is by right President of the Committee. But this is a voluntary and not an obligatory previous censorship. By a former resolution of the Diet of 1788, books of controversy which attack the established religion (the Lutheran or Augsburg Confession) or support the tenets of other communions, are excluded

from the liberty of the press. Persons guilty of libel and other offences by means of the press are tried by a jury. By a law enacted by the Diet in 1812, a newspaper which insults or defames a foreign government friendly to Sweden, is liable to be suppressed by order of the chancellor, without any other formality. This has occurred repeatedly, but then the paper appears again the next day under a slightly altered title; for instance, the *Argus* is suppressed, but is continued under the title of *Argus II.* or *Argus III.*

The constitution of Norway proclaimed in the Storting of Eidsvold, November, 1814, enacts that no one shall be prosecuted for his printed writings, unless he wilfully and evidently manifests or encourages others to manifest disobedience to the laws, contempt for religion, morality, or the constitutional powers, or resistance to the constitutional authorities, or is guilty of defamation and libel against any one, in which case he shall be fined by the tribunals.

The constitution of the Netherlands of 1815, which is still in force in the kingdom of Holland, says, art. 227, "The press being the fittest means to spread knowledge, every one has a right to make use of it to communicate his thoughts, without needing previous permission. But all authors, printers, editors, or publishers, are answerable for those writings which attack the rights either of society or of individuals."

By art. 18 of the constitution of Belgium the press is declared to be free; no censorship can ever be established. Authors, editors, and printers are not required to give security. Offences committed through the press are tried by the ordinary courts.

In Denmark, an ordinance of Christian VII., dated September, 1799, on the subject of the press, abolishes the previous censorship, but imposes severe penalties on those who offend through the press; death is the penalty for any person who shall excite rebellion or provoke a fundamental change in the constitution of the monarchy. Whoever censures or defames or excites hatred or contempt against the constitution of the kingdom and the go-

vernment of the king, either on general grounds or on the occasion of any particular act, shall be banished for life, and if he returns without permission, shall be sent to hard work for life. Whoever shall censure or vilify the monarchical form of government in general shall be exiled from three to ten years. Any libel against the person and honour of the king, or any member of the royal family, shall be punished with exile. Whoever publishes a work tending to deny the existence of God, or the immortality of the soul, or to cast censure or ridicule on the fundamental dogmas of the Christian religion, is to be banished likewise. Any one who shall attack or ridicule the tenets of the other Christian communions tolerated in the kingdom, shall be punished by a short imprisonment on bread and water. The same punishment is assigned to those who shall offend public morals by their writings. Any one defaming a foreign prince friendly to Denmark, or ascribing to his government any unjust or disgraceful act, without quoting any authority, shall be sent to hard work in a house of correction for a limited period.

The liberty of the German press, or the thing so called, varied in former times according to the spirit of the different governments. As long as the emperors of the house of Austria were under the influence of the Jesuits, they tried to establish certain rules in order to check the press equally all over the empire, and an imperial commission was appointed, which sat at Frankfort on the Main, to watch over the productions of a host of authors. The states of the empire however showed little deference to imperial orders; many of them allowed the press nearly complete freedom; and Saxony being foremost among them, the booksellers ceased to assemble at Frankfort, and chose Leipzig for the centre of their extensive trade, which it has remained ever since. King Frederick II. of Prussia granted liberty to the press "because it amused him;" but he cautioned the editors of newspapers "to act cum grano salis, and especially not to give offence to foreign states." The censorship was abolished in Bavaria in 1803; in Hesse and Mecklenburg it existed only

occasionally; and in Holstein the press had always been free; but these were exceptions, and in most of the Roman Catholic states, especially in Austria, the press was most arbitrarily checked. The great exertions of the German nation to put down the power of Napoleon and re-establish most of their petty princes on their thrones, seemed to deserve some reward, and the princes consequently promised, in Art. 18 of the Act of Confederation, "that the diet should occupy itself in its first meeting with fixing general rules concerning the press in Germany." The nation thought that such rules would be in favour of the liberty of the press, but it soon became manifest that they were greatly mistaken in forming such sanguine hopes. Several of the minor states, however, abolished the censorship; as Nassau in 1814, Würtemberg in 1815, and Saxe-Weimar in 1816. The political agitation of Europe after the downfall of Napoleon, and the desire of a new order of things, which seemed to take the same turn in Germany as in Spain and Italy, caused the German rulers to hold a congress at Karlsbad in 1819, by which the German periodical press was enslaved by the decision that all books or other printed publications under twenty sheets should be subjected to a censorship. The spirit which directed this censorship was most arbitrary and harsh, and led to collisions of the most dangerous kind between the representative bodies of the states and the rulers. Nor was the liberty of the press for books above twenty sheets respected, and political authors especially experienced many persecutions, while, strangely enough, religious matters might be treated with perfect freedom.

The French revolution in 1830 produced most salutary effects in Germany. The people rose in arms, demanding constitutional rights, and above all a free press, and the rulers were in some states compelled to grant their claims. In § 37 of the new constitution of the electorate of Hesse, it is said that the press and the book trade shall enjoy complete liberty, and that the censorship shall only exist in cases specified by the diet. Similar laws were made in the kingdoms of



Saxony and Hanover, in Brunswick and most of the minor states. The most liberal regulations for the press were obtained by the chambers of the grand duchy of Baden, in December, 1831; but the fear of the French revolutionists having then subsided, the laws of Baden as to the press were declared by the diet, in 1832, to be contrary to the general law (the decree of Karlsbad of 1819), and the press in Baden was once more enslaved. On the 28th of June, 1832, the diet resolved that care should be taken to compel the editors of newspapers and other political productions to keep within proper limits in publishing the debates of the representative bodies, and the diet of 1836 declared that editors of newspapers and political writers should publish no accounts of such debates except those published in the government papers, or extracts from them. Since that time there has been a visible reaction against the freedom of the press, though the censorship is much more severe against political and historical publications than against other works. It was hoped that the present king of Prussia, who manifested very liberal sentiments when his kingdom was threatened with a French invasion, would grant a free press; but that fear having ceased in 1841, the king gave fresh orders to adhere strictly to the decree of Karlsbad, so that now only books above twenty sheets are exempt from the censorship. There are, however, plenty of means in Prussia, as well as in the rest of Germany, for preventing authors from publishing works of a tendency contrary to the views of its government; for nearly all men of scientific attainments, being in the service of government, expose themselves to dangerous consequences unless they act as Frederick the Great recommended, "cum grano salis." A proof of the influence of the government in this respect is the strange change in the spirit of so many Prussian authors since the accession of the present king. Previous to this event the worship of the philosophy of Hegel was almost necessary for obtaining places under government: the present king, however, was known to be opposed to Hegel, and no sooner was he king

than Hegel was abandoned by most of his disciples, and those who stuck to him were attacked without mercy. Great numbers of Prussian authors, who were not known for their piety before the king's accession, became known for it after. The only country where the press was free, in spite of the decrees of the diet, was the duchy of Holstein, as mentioned above: and the most liberal German works were printed and issued by the publishers at Altona: but since the dissensions between the German and the Danish populations of the kingdom of Denmark, the periodical press in that duchy has been enslaved to such a degree that even suspicious music has not passed the scissors of the censors, as we read in a late number of the 'Hamburger Correspondent.'

In the political systems prevalent in Germany, censorship is one of the various functions of the police, a word which among the German theorists has a much larger meaning than we are accustomed to give to it. The direction of the censorship was accordingly in the hands of the ministers of police. The present king of Prussia, however, established an Ober-Censur-Behörde, or a commission charged with the direction of the censorship and the superintendence of the different censors in the provinces. A similar arrangement was lately made in Austria: the censorship was taken from the minister of police, and intrusted to a commission, as in Prussia, which is under the control of the minister of the interior.

(*Conversations-Lexicon, Supplement, Art. Pressfreiheit; Lesur, Annuaire; Venturini, Chronik des Neunzehnten Jahrhunderts*)

The constitutions of the various States composing the North American Union admit the absolute liberty of the press. There is of course in each state a law of libel, sufficiently strict, concerning which it may be entertaining to read Cobbett's account of his own trial, entitled 'A Republican Judge,' under the assumed name of Peter Porcupine. In the slave states there are very severe laws against interfering by the press with the great question of slavery. It has been stated

that abolitionist newspapers are seized at the post-office.

The republics of Spanish America likewise acknowledge the principle of the unfettered liberty of the press, however it may have been often violated in practice amidst the never ending factions and civil wars of those countries. The constitution of the Brazilian Empire establishes the freedom of the press without any censorship; but an author is liable to punishment in such cases as are provided by law.

(Beckmann, *History of Inventions*; Burton, *Diary*; *Encyclopédie Méthodique*, section "Jurisprudence," art. "Censure des Livres;" Thibaudau, *Histoire de la France et de Napoleon Bonaparte*; Bacqua, *Codes de la Législation Française*, 1843; *Collection de Constitutions et Chartes*, by A. Dufau, etc. Paris, 1830; and the other works and pamphlets quoted in the course of this article.)

**PRESUMPTION.** A presumption is variously defined. The following is a definition:—"A presumption may be defined to be a belief as to the existence of a fact not actually known, arising from its necessary or usual connection with others which are known." (Starkie, *Law of Evidence*, i. 23.) In another passage (p. 1234) the same definition is given in substance, with the word "inference" substituted for "belief."

A fact may be proved by the immediate knowledge of the witnesses to it, which is called direct evidence. If it cannot be so proved, some other fact may generally be proved by direct evidence, from which the fact in question may often be inferred. If such other fact can be proved, and the existence of the fact in question can be inferred, such inference is a presumption. The inference may be either strictly logical or necessary, or it may be only probable, that is, the fact inferred may be true or it may not be true. If we cannot infer from the fact proved that the fact in question may be true, there can be no presumption at all as to such last fact. In all cases, then, in order to establish a presumption, there must necessarily be an inference from a fact or facts; but the inference may be either necessary or pro-

bable. If necessary, it cannot, by the supposition, be disproved; if probable, it may either be disproved by evidence, or it may not be possible to disprove it for want of evidence, and yet the inference will still only be probable.

Presumptions which are necessary can hardly ever be considered as not conclusive in any system of law. Presumptions which are only probable may by positive law be made as conclusive as necessary presumptions, that is, it may not be permitted to disprove them when they could be disproved; or where such disproving evidence is wanted, and yet the inference is only probable, positive law may give it the same conclusive force as a necessary presumption.

A presumption, when established, that is, a fact when presumed, is legally the same as a fact proved in such manner as the particular system of law requires such fact to be proved. If, then, the law annexes any legal consequence to a given fact when proved, it annexes the same to it when the fact is legally presumed. It is only by virtue of legal consequences being annexed to facts that they become objects of jurisprudence. The establishment then of a presumption, in a legal sense, is only the establishment of a fact to which certain legal consequences are annexed.

In our own system, the presumption is sometimes made by a judge or a number of judges, and sometimes by a jury, but the consequences are the same. Some writers say that presumptions are either "legal and artificial" or "natural." They divide "artificial or legal presumptions" into two kinds, immediate and mediate. "Immediate are those which are made by the law itself directly and without the aid of a jury. Mediate presumptions are those which cannot be made but by the aid of a jury." "Presumptions may therefore be divided into three classes: 1, Legal presumptions made by the law itself, or presumptions of mere law; 2, Legal presumptions to be made by a jury, or presumptions of law and fact; 3, Mere natural presumptions, or presumptions of mere fact." (Starkie, p. 1241.)

The first class of presumptions, it is

said, are either absolute and conclusive, or they may be rebutted by evidence to the contrary. The presumption of law that a bond was executed upon a good consideration cannot be rebutted by evidence, so long as the bond is unimpeached, that is, so long as it is admitted to be a bond. But though the law presumes that a bill of exchange was accepted on good consideration, it admits evidence to show that such was not the fact. Now this presumption of mere law is nothing more than a fact presumed by a judge or judges, to which fact so presumed, that is, so taken to be true, certain legal consequences are annexed or belong. It is, however, a very inaccurate expression to speak of a presumption of mere law; for, as the same writer says (p. 1242), "when the law presumes or infers any fact to which a legal consequence is annexed from any defined predicament of facts, the law in effect indirectly annexes to that predicament the legal consequence which belongs to the presumed fact."

One presumption of mere law may be opposed by another, and the law, that is, the court, must then decide which is the stronger.

Presumptions of *mere law*, as shown, are such as are made by the court. There are instances of presumptions made by Act of Parliament, that is, the legislature has declared that a certain fact or facts, when proved, shall be conclusive proof of another unproved fact which is not a necessary, and, it may be, is often not a highly probable inference from the proved fact. A statute of 21 James I. c. 27 (now repealed), made proof of the concealment of the death of a bastard child by the mother conclusive evidence of her having murdered it, unless she could prove that it was born dead. Sometimes an Act of Parliament declares that a certain presumption shall not be allowed or made. (2 & 3 Wm. IV. c. 71, s. 6.) A presumption of mere law is sometimes called an *intendment* of law.

Presumptions of *law and fact* are "also artificial presumptions which are recognised and warranted by the law as the proper inferences to be made by juries under particular circumstances." (Starkie, p. 1243.) In other words, these are

facts which the law, that is, the court, will allow a jury to presume from other facts proved by direct evidence. When the presumed fact is declared by the jury to be a real fact, or is implicitly declared in their verdict, the legal effect is the same as if it were presumed by the judge. Indeed it is said "that the inference (made by the jury) is never conclusive," which appears to mean that there are presumptions which are not necessary, and sometimes may not be highly probable, but they are still such as a jury may make (at least under the direction and advice of the court), and their verdict will be good. "Thus a jury is required, or at least advised by a court, to infer a grant of an incorporeal hereditament after an adverse enjoyment for the space of twenty years unanswered." (Starkie, p. 1244.) On this subject it is said in another passage (p. 1214), "the presumption of right in such cases is not conclusive; in other words, it is not an inference of *mere law* to be made by the courts, yet it is an inference which the courts advise juries to make whenever the presumption stands unrebutted by contrary evidence. Such evidence in theory is mere presumptive evidence; in practice and effect it is a bar."

The third class contains "the natural presumptions of *mere fact*." "They are wholly independent of any artificial legal relations and connections, and differ from presumptions of mere law in this essential respect, that those depend upon or rather are a branch of the particular system of jurisprudence to which they belong; but mere natural presumptions are derived wholly by means of the common experience of mankind from the course of nature and the ordinary habits of society." (Starkie, p. 1245.) This class of presumptions properly belongs to a jury, and yet the courts will sometimes make presumptions of this kind without the aid of a jury. These presumptions then are such as a jury may make without the advice or direction of the court, and "it seems to be a general rule that whenever there is evidence on which a jury have founded a presumption according to the justice of the case, the courts will not grant a new trial." (Starkie, p. 1247.)

Though this division of presumptions is far from being characterised by precision, it cannot be denied that it is a kind of index to the practice of the courts as to presumptions. The division is founded—first, on the fact that certain presumptions, which are by no means necessary consequences from the facts proved, are admitted by the judges either as conclusive or as valid, till they are disproved; these presumptions are sometimes made by the court, but when it is necessary the court will permit or advise the jury to make them in order to arrive at a conclusion as to the fact in question: and, secondly, it is founded on the different functions of the judge and the jury, the former declaring the law, and the latter finding the facts, when their assistance for that purpose is necessary.

The presumptions of *mere law*, whether made by the court or by the jury under its direction, are really artificial rules of proof which have been established by judicial decisions, or which in any new case the court upon due consideration will make, and if necessary will direct the jury accordingly.

In those courts where there is no jury, one ground of the classification made by Starkie does not exist, and the judge makes his presumptions either in conformity to the technical rules of his court in cases to which they apply, or he makes his presumptions in cases where there are no technical rules, just as a jury does or any indifferent persons do upon facts submitted to them for their consideration.

Presumption then is either a positive rule by which a certain conclusion is declared by statute, or by the judges, or by the jury under the direction and advice of the judges, to follow from certain other proved facts; or it is a conclusion from certain other proved facts which a judge or a jury may make if they find the probative force of the proved facts sufficient to induce them to make the inference called by Starkie a natural presumption, or presumption of mere fact. Presumptions therefore are incident to every head of law in which proof is required; and the presumptions which are positive rules of law are part of the

law of the things to which they relate. The subject of Presumptions is an important part of the law of Evidence, and it requires a better discussion than it has yet received.

The term "*præsumptio*" occurs occasionally in the '*Digest*,' and in the sense of an inference from a fact proved or admitted. (*Dig.*, 22, tit. 3, s. 25.) The general rule as to proof is, that he who affirms must prove what he affirms. "There are, however, facts which are to be presumed until the contrary is proved, *præsumptiones*; he who maintains such a fact is accordingly relieved from the proof of it: the burden of proof in reference to it is transferred to the opposing party, who maintains the non-existence of the fact; as for example, the continuation of a right which has once begun to exist is presumed, and consequently he who maintains that it has ceased must prove that: he who affirms that he has a right, is only required to prove its acquisition, and not, what is contained in his affirmation, that he still has it." (*Puchta, Cursus, &c.*, ii. 183.)

(Bentham, *Rationale of Judicial Evidence*; Starkie, *On Evidence*; Phillips, *On Evidence*.)

PRESUMPTIVE HEIR. [DESCENT.]

PRICE. Political economists speak both of natural or necessary price and market price. The natural price of commodities, it is said, is as a general rule determined by the cost of production, or, in other words, by the amount of labour expended on them; and consequently equal quantities of labour will exchange for equal quantities of labour. The mode of ascertaining what are equal amounts of labour is not and cannot be clearly explained; and it is admitted that the equality of labour is not to be measured by time only, but the kind of labour must be taken into the account. This natural price is the same thing which is meant by the expression Real Value, which is said to be dependent solely on the quantity of labour necessary for the production of a thing. The market price or exchangeable value is that value in exchange which is actually got for anything, which will not always be the same as the price called

natural or real; but the exchangeable value, it is said, never varies materially either above or below the real value. Accordingly the cost of production is considered to be that which regulates market price, when industry is not restricted; but this doctrine is sometimes announced with a limitation: the things produced must be such as can be indefinitely increased in quantity by the application of fresh capital and labour to their production.

According to this doctrine labour is the measure of real value, and real value never varies much from exchangeable value. But labour itself requires a representative, something that shall measure one kind of labour compared with another; and gold and silver are commonly used for this purpose. But gold and silver also vary both in real value, as above explained, and in exchangeable value: the result of all which is, that there is no measure of the exchangeable value of a thing other than the amount of gold or silver or anything else that can be got for it. Things must be exchanged either by simple barter without any price being fixed on the things exchanged, or by an exchange of commodities in which exchange the commodities have a money price fixed upon them, or by giving gold and silver or other things which are current as coin for commodities.

In nations called civilized the exchanges are actually made by giving stamped metal for other things, or by some arrangement which is equivalent to giving stamped metal, so far as concerns the price of things. The exchangeable value or the market price of a thing is therefore the money which it really brings. He who has labour to offer for hire, and he who by labour, or by labour and capital combined, which is the accumulated result of labour, produces a thing for sale, under the ordinary circumstances of society know pretty nearly what they will get for their labour; for the price which they will get is either a matter of contract with some determinate person or persons, or it is that market price which, as a general rule, varies during limited periods of time within certain limits that are tolerably well ascertained. The

principle which determines whether a man will continue to offer his labour for the hire or price which at any particular time he can have for it, or will continue to produce things for the price which at any particular time he may be able to get for them, is stated in *POLITICAL ECONOMY*.

Some writers who have laid down the doctrines of natural and market price as above stated, have, however, not overlooked the facts which are exceptions to the doctrine. Professor Tucker remarks (*The Laws of Wages, Profits, and Rent*, Introduction, p. 8), "All commodities may therefore be divided into two kinds as to their exchangeable value: one, that class which, being the product of man, will command as much labour in the market as it has cost to procure them; the other, the product in part of nature, in which the labour they will command may greatly exceed that expended in obtaining them, according to the proportion between the competition to possess them and the supply." The distinction here made is cited for the purpose of showing that some economists have perceived that the labour expended on things is not always the measure of their exchangeable value. It remains for economists to consider whether the labour expended upon anything can in any case with any propriety of language be considered the measure of its exchangeable value. Labour, it is affirmed, gives to everything its exchangeable value, which is true. It is also said that the amount of labour regulates or determines the exchangeable value. But it is admitted that the value of labour itself depends on the demand for it and the supply. Therefore, according to this theory, exchangeable value is regulated or determined by labour; the exchangeable value of which labour is determined by something else. The term labour is here of course used in its comprehensive sense, as including all means, material and not material, by which anything is brought into that form in which men desire to have it, and brought to that place in which the men are who desire to have it.

The terms Natural Price and Real Value, if they are taken to signify merely, as

they must be taken, the value which a man in his own estimation puts on the things which he has produced, may be convenient terms; though the word Natural is a word always liable to abuse, and Real is a singular kind of term to indicate the value which a man sets on his own labour. If he wants to keep the product of his labour for himself, he may call it by any name that he likes. But as a general rule, the real value of a man's labour, that which he can realize for it, is the value of it to others, its exchangeable value. The exchangeable value of a thing is its realization: the so-called Real value is idealization, which often fails to become Reality.

A man may admit that labour is the sole source of wealth, and of all exchangeable value, and that the cost of production is an essential element in the exchangeable value of all commodities, without admitting that the cost of production is the regulator of selling prices. He may contend that in the actual operation of exchanges it is the efficient demand, the will and the power to purchase, combined with the supply that really regulates the selling price of all things.

These two opinions are not so directly opposed as at first sight may appear. There are two ways of viewing the subject of exchangeable value. The mode which some economists adopt is to trace it from the operations of a rude and savage state to the complicated conditions of modern society—a process something like that of tracing government from a supposed state of nature to the actual condition of existing governments. There is nothing gained by this mode of viewing the subject, and it involves the introduction of certain hypotheses not necessary to the investigation. The other method is to view societies as they exist, and to analyse the complicated movements, in which consist their activity and energy. In this actual condition we know on what terms buyers and sellers meet in the market. Each brings to market what he does not want, and he gets what he can. Each knows that the other expects and desires to make a profit by the exchange, and that if there is not profit on both sides, or what both parties consider to be

profit, the exchange will not continue. Each therefore has his own measure of that which he would give in exchange, and he is moved to produce what he offers in exchange by the general market price of that which he gives in exchange. His power to produce and his motive to produce are therefore regulated at each moment by something which is anterior to his production and which regulates his production. The exchangeable value of a thing therefore, as determined by the selling price at a given time or by the average of selling prices for a certain period, is in practice the real regulator of the labour of him who produces for sale. A man who ventures on the production of a new article can only guess whether it will exchange for such a value as will give him a profit: and he is often deceived. If he can produce a thing that is already in demand cheaper than it has been hitherto produced, he has a certainty of a profit, and a larger profit on each single article than before, unless there are competitors in the market. Competition will reduce his rate of profit. Practically, the selling prices of any given time, or the average of such prices for a given period, regulate the operations of producers both as to the quality and the amount of the articles which they produce. The producer has always regard both to the cost of that which he produces and the probable price that he can get for it. The price that he can get cannot determine the cost of his production, nor can the cost of his production determine the price that he can get for it; but he does produce with reference to a certain price which he expects to get. The consumer who buys his commodity never considers the cost of its production. He simply avails himself of the competition of the sellers to get it at the lowest market price: if it is an article of necessity, he must buy so long as he has the means of buying; if it is an article of luxury, he will often do without it, if the amount of the supply does not allow him to have it on his own terms; and he leaves the producers to make the best of their wares.

The difficulty of attaining clear conceptions on all such subjects as price is inseparable from the complicated nature

of the elements which enter into them. The fault of most economical writers consists in the absoluteness of the principles which they lay down, for there is perhaps no principle applicable to the operations of industry which is susceptible of being laid down in absolute unqualified terms. Another obvious fault in some economical writers consists in not analysing the operations of society as they actually are, but in building up their theories almost entirely on certain axioms.

Adam Smith's opinions on Price are contained in his seventh chapter: upon which see the notes in the edition of Smith, published by Knight & Co., 1840: the opinions of a modern school are contained in the article 'Political Economy' in the *Edinburgh Supplement to the 'Encyclopædia Britannica.'* This article, with some notes upon it by the Rev. J. M'Vickar, has been republished at New York.

PRIMOGENITURE may be defined to be that rule of English law by which a title of dignity or an estate in land comes to a person in respect of his being an eldest male. If a man dies seised of real estate, of which he had the absolute ownership, without having made any disposition of it by his last will, the whole descends to the heir at law, or customary heir; and the heir at law is such by virtue of being the eldest male person of those who are in the same degree of kindred to the person dying, or the representative of such eldest male. [DESCENT.] This is a case in which primogeniture operates. A common example of primogeniture is where a father dies absolutely entitled to real estate, and without disposing of it by will, in which case his eldest son takes it all. If land is settled or entailed on a man and his male issue, the eldest son takes the land by two titles, first as being a male, and next as being the eldest son. The law of primogeniture then only applies in the case of land when the owner dies without having made any disposition of it by will, or where the land is settled on a man and his male issue. It does not apply when the interest in land is a chattel interest, or a term of years, whatever

may be its duration; nor does it apply when real estate descends to daughters as coparceners.

At present, those who are the absolute owners of large landed estates seldom die without making a disposition of them by will. In the case of lands which are settled, the person in possession is generally tenant for life, and the inheritance is entailed on the eldest son. When the eldest son is about to marry, it is usual for the father and son to take the usual legal steps (which they can do as soon as the son is of age) to unsettle the estate and obtain the absolute ownership. They then resettle the estate, making the father tenant for life as before; the son, who was before tenant in tail, is also made only a tenant for life; and the inheritance is settled, as before, on the eldest son of the intended marriage. Such eldest son takes the estate, not as heir, and therefore not by the law of primogeniture, but he takes it as the person designated by the deed of settlement.

When a man happens to be tenant in tail, he usually takes the legal steps necessary (which he can do as soon as he is of age) to acquire the absolute ownership of the property, which he then generally settles again by deed or will, or disposes of absolutely.

It is usual in England to settle all large estates, and the object of the settlement is to keep the estates together, and to perpetuate them in one family; but there is a limit to this power of settlement. A man cannot, either by deed or will, settle his land, so as to prevent the absolute ownership of it from being obtained, for a longer period than a life or lives of persons in existence at the time when the settlement takes effect, and twenty-one years more.

Lands in GAVELKIND and BOROUGH ENGLISH are an exception to the general rule of law as to the descent of land.

The law of primogeniture then only operates in the cases already explained; and the system of settlements by which property is kept together in large masses is quite distinct in principle from the law of primogeniture. It is not the result of a law which favours primogeniture, but it is the result of the legal

power which an owner of land has over it, and of the habits of the people. The various reasons which have laid the foundation of this habit, and which perpetuate it, are foreign to the consideration of primogeniture as a rule of law.

In Virginia, after the Revolution, an Act was passed for converting estates tail into fee-simple, and at the same time the law of primogeniture was abolished. These laws have so far been in accordance with or have acted on public opinion, that a parent by his will now generally makes the same disposition of his property as the law makes in case he dies intestate. (*Tucker's Life of Jefferson*, i. 96, &c.)

(*Remarks on Primogeniture and Entails*; *Hayes, Introduction to Conveyancing*.)

PRINCE is the Latin word *princeps*, which was originally used to denote the person who was entitled *Princeps Senatus* in the Roman State. He seems to have been originally the *custos* of the city, and his office was one of importance. Subsequently it became a title of dignity, and the *princeps* was named by the censors. (*Liv.*, xxvii. 2.) Augustus adopted the title of *princeps*, as a name that carried no odium with it (*Tacitus, Annal.*, i. 1); and this became henceforward the title of the master of the Roman world. Accordingly the constitutions of the emperors are called *Principum* (*Gaius*, i. 2), or *Principales*. The word *princeps* is formed similarly to *anceps*, *municeps*, &c., and contains the same element as "*primus*." The word *prince*, which is derived from *princeps*, is now applied to persons who have personal pre-eminence, and especially to certain sovereigns of small states who possess sovereign power; and also to others who possess the title without sovereign power or anything that distinguishes them politically from other nobles or persons who enjoy privileges. But the word seems not to have acquired so definite a sense as that which belongs to king, duke, marquis, earl, and some others of the class; but rather to denote persons of high rank in certain states, as in Prussia, Russia, Italy, and other continental states, or persons who are junior members of sovereign houses.

In England it has sometimes been the practice of the heralds to speak of a duke as the high and mighty prince; but the word seems rather to be restricted among us in its application to persons who are of the blood-royal, that is, a son, grandson, or nephew of a king; and it would probably be extended to the remote male posterity of such persons, though no case has arisen in the course of the last three centuries. But in its application it is merely a term of common language, not being conferred, like the title of duke, in any formal manner: and even the precedence which is given to blood-royal has respect to birth, and not to the enjoyment of this word as a title of honour. The eldest son of the king or queen regnant is made Prince of Wales by creation.

PRINCIPAL AND AGENT.

[AGENT.]

PRIOR, PRIORY, ecclesiastical terms denoting certain monastic foundations, and the heads of such foundations. They differ in nothing essentially from the terms abbot and abbey. There were in England religious houses, the chiefs of which were called priors, quite as rich and as powerful as many that had a chief who was called the abbot. Thus in Yorkshire there were two houses at no great distance from each other, called Roche and Nostel, the head of the former being an abbot and of the latter a prior, though Nostel was the more ancient and more considerable foundation. Neither has the distinction respect to the order to which the house belonged; for Kirkstall had an abbot, while Fountains had only a prior, and yet both were Cistercian houses. The prior of Saint John of Jerusalem was equal to any abbot; yet in the main we find the greater monastic foundations presided over by monks who were called abbots, as Glastonbury, Malmesbury, Tewkesbury, and others of ant-Norman foundation. In some cases there was both an abbot and a prior, when the abbot was regarded as the superior officer; and in the priories there was often a second officer called the sub-prior.

PRISONS. [TRANSPORTATION.]

PRIVATE ACT. [PARLIAMENT.]

PRIVATEER, a private ship of war,



fitted out at the cost of an individual for the purpose of carrying on hostilities on his own account, but with the permission of a belligerent state, against the public enemy. It is the practice of most nations to commission vessels of this kind as auxiliaries to the public force. The owners of them are licensed to attack and plunder the enemy, and their enterprise is encouraged by allowing them a large portion of any property which they may capture. It is usual for the country on whose behalf they carry on war to take security for their duly respecting the rights of neutrals and allies, and observing generally the law of nations. In Great Britain persons are empowered to fit out privateers by letters of marque, which are granted by the crown upon application in due form. (45 Geo. III. c. 72; Blackstone, *Commentaries*, i., p. 259; 1 Kent's *Commentaries*, 96.)

**PRIVILEGE** (*Privilegium*, from the sense of which, however, it has been perverted), a particular beneficial exemption from the general rules of law. The original sense of *privilegium* is explained in Law. Privilege is of two kinds; *real*, attaching to place, and *personal*, attaching to persons, as ambassadors, peers, members of parliament, and attorneys.

Formerly many places conferred the privilege of freedom from arrest, even in criminal matters, upon those who entered them; and even in later times many places existed which privileged those within them from arrest in civil suits. Of these the most notorious were White Fryars, the Savoy, the Mint, and other places in their neighbourhood. But by 8 & 9 Wm. III. c. 27, the privileges of all these places were abolished. However, at the present time, no arrest can be made in the king's presence, nor within the verge of the palace of Westminster, nor in any palace where he resides, nor in any place where the king's justices are sitting (3 *Inst.*, 148). Personal privilege, which gives freedom from arrest, is enjoyed by all suitors, counsel, witnesses, or other persons attending any courts of record upon business; or an arbitrator under a rule of *Nisi prius*. This exemption is to be interpreted liberally, and will not, therefore, be forfeited by taking refresh-

ment after a suit, or by going other than the direct road to or from a court (*Com., Dig.*, tit. 'Privileges'). The privileges of the members of the House of Peers and of the House of Commons are stated under PEERS and PARLIAMENT.

**PRIVY COUNCIL** (*Cousilium regis privatum*, *Concilium secretum et continuum concilium regis*). The privy council, or council table, consists of the assembly of the king's privy councillors for matters of state. During the existence of the Star-chamber, the members of the privy council were also members of that court. Their number was antiently about twelve, but is now indefinitely increased. The present usage is, that no members attend the deliberations of the council who are not especially summoned for that purpose. Members of the privy council must be natural-born subjects of England, and are nominated by the king without any patent or grant. After nomination and taking the oath of office, they immediately become privy councillors. Formerly they remained in office only during the life of the king, who chose them subject to removal at his discretion; but by 6 Anne, c. 7, the privy council continues in existence six months after the demise of the crown, unless sooner determined by the successor, and they are to cause the successor to be proclaimed. The privy council of Scotland is now merged in that of England, by 6 Anne, c. 6. The duties of privy councillors, as stated in the oath of office, are to the best of their discretion truly and impartially to advise the king; to keep secret his counsel, to avoid corruption, to strengthen the king's council in all that by them is thought good for the king and his land, to withstand those who attempt the contrary, and to do all that a good councillor ought to do unto his sovereign lord. By the Act of Settlement (12 & 13 Wm. III. c. 2) all matters relating to the government properly cognizable in the privy council are to be transacted there; and all the resolutions taken thereon are to be signed by such of the privy council as advise and consent to them. [CABINET.]

The court of privy council is of great antiquity; and during earlier periods of our history appears not always to have

confined itself to mere matters of state. It had always and still has power to inquire into all offences against the government, and to commit offenders for the purpose of trial in some of the courts of law; but it often assumed the cognizance of questions merely affecting the property and liberties of individuals. This is evident from the complaints and remonstrances that so frequently occur in our history, and ultimately from the declaratory law of the 16 Chas. I. referring to such practices. Probably the very statement of Sir Edward Coke, that the subjects of their deliberation are the "public good, and the honour, defence, safety, and profit of the realm . . . private causes, lest they should hinder the public, they leave to the justices of the king's courts of justice, and meddle not with them," proceeded from his knowledge that such limits had not always been observed, and his jealousy of their invasion. Several other passages in his works seem to show that this was so. These encroachments, in one arbitrary reign, received the sanction of the legislature. By 31 Hen. VIII. c. 8, the king, with the advice of his privy council, was empowered to set forth proclamations under such pains and penalties as seemed to them necessary, which were to be observed as though they were made by Act of Parliament. It is true there was an attempt to limit the effects of this, by a proviso that it was not to be prejudicial to any person's inheritance, offices, liberty, goods, or life. The statute itself, however, was repealed in the first year of the ensuing reign. The king, with the advice of his council, may still publish proclamations, which are said to be binding on the subject; but the proclamations must be consonant to and in execution of the laws of the land. The attempts to enlarge the jurisdiction of the council appear always to have been resisted as illegal; and they were finally checked by the 16 Chas. I. c. 10. That statute recites that of late years "the council-table hath assumed unto itself a power to intermeddle in civil causes, and matters only of private interest between party and party, and have adventured to determine of the estates and liberties of the subject,

contrary to the laws of the land, and the rights and privileges of the subject." By the same statute it is declared and enacted that neither his majesty nor his privy council have or ought to have any jurisdiction in such matters, but that they ought to be tried and determined in the ordinary courts of justice, and by the ordinary courts of law.

Subsequently, however, to this statute, in matters arising out of the jurisdiction of the courts of the kingdom, as in colonial and admiralty causes, and also in other matters, where the appeal was to the king himself in council, the privy council continued to have cognizance, even though the questions related merely to the property of individuals. By 2 & 3 Wm. IV. c. 92, the powers of the high court of delegates, both in ecclesiastical and maritime causes, were transferred to the king in council. The decision of these matters being purely legal, it was found expedient to make some alterations in the court, for the purpose of better adapting it to the discharge of this branch of its duties. Instances had before occurred where the judges had been called in and had given extra-judicial opinions to the privy council; but the practice was inconvenient and unsatisfactory, and all necessity for it is now wholly removed. By the 3 & 4 Wm. IV. c. 41, the jurisdiction of the privy council is further enlarged, and there is added to it a body entitled "the judicial committee of the privy council." This body consists of the keeper of the great seal, the chief justice of the King's Bench and of the Common Pleas, the master of the rolls, the vice-chancellor of England, the chief baron of the Exchequer, the judge of the prerogative court of Canterbury and of the high court of admiralty, the chief judge of the bankruptcy court, and all members of the privy council who have been presidents of it, or have held the office of chancellor or any of the before-named offices. Power is also given to the king by his sign manual to appoint any two other persons who are privy councillors to be members of the committee. By § 2, all appeals or applications in prize suits, and in all other suits or proceedings in the courts of admiralty, or vice-ad-

miralty courts, or any other court in the plantations in America and other his majesty's dominions abroad, which may, by any law, statute, commission, or usage, be made to the high court of admiralty in England, or to the lords commissioners in prize cases, shall be made to his majesty in council; and such appeals shall be made in the same manner and form and within such time wherein such appeals might, if this Act had not been passed, have been made to the said high court of admiralty, or to the lords commissioners in prize cases respectively; and all laws or statutes with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to his majesty in council; and § 3, all appeals or complaints in the nature of appeals whatever which either by virtue of this Act, or of any law, statute, or custom, may be brought before his majesty, or his majesty in council, from or in respect of the determination, sentence, rule, or order of any court, judge or judicial officer, and all such appeals as are pending and unheard, shall from the passing of this Act be referred by his majesty to the said judicial committee of his privy council; and that such appeals, causes, and matters shall be heard by the said judicial committee, and a report or recommendation thereon shall be made to his majesty in council for his decision thereon as heretofore, in the same manner and form as has been heretofore the custom with respect to matters referred by his majesty to the whole of his privy council or a committee thereof, the nature of such report or recommendation being always stated in open court. The judicial committee are authorised to examine witnesses on oath, and to direct issues to be tried by a jury. The judicial committee has the same power of punishing contempts and of compelling appearances, and his majesty in council has the same power of enforcing judgments, decrees, and orders as are exercised by the high court of Chancery or the court of King's Bench. A registrar is attached to the judicial committee.

The privileges of a privy councillor, beyond those of mere honorary precedence, formerly related to the security of his

person. If any one struck another a blow in the house or presence of a privy councillor, he was fineable. Conspiracy by the king's menial servants against the life of a privy councillor was felony, though nothing were done upon it. By 9 Anne, c. 16, any unlawful assault by any person on a privy councillor in the execution of his office was felony.

These statutes have, however, been now repealed, by 9 Geo. IV. c. 31, and any offence against a privy councillor stands on the same footing as offences against any other individual. (1 Co. Lit., 110, a, n. 5; 3 *Inst.*, 182; 4 *Inst.*, 52; 1 Blackstone, *Com.*, 222; Hallam's *Constitutional History*.) [DELEGATES, COURT OF.]

PRIZE, property taken from an enemy. The term is generally applied to property taken at sea exclusively. The law of prize is regulated by the law of nations. Sentence of condemnation, that is, sentence that the thing captured is prize, and that consequently the property of its original owner in it is entirely divested, must be pronounced by a court of the capturing power duly constituted according to the law of nations. The prize court of the captor may sit in the territory of an ally, but not in that of a neutral. Questions of prize are by the English law disposed of in the courts of Admiralty. [ADMIRALTY COURTS.]

PRIZE-MONEY. All the Acts relating to army prize money have been repealed by 2 & 3 Wm. IV. c. 53, which also enacts that all captures made by the army shall be divided according to such general rule of distribution as the king shall direct. Appraisements and sales of prize and capture are made by agents appointed by the commanders and other commissioned officers. A certified list of the persons entitled to share in the capture is transmitted to Chelsea Hospital by the commanding officer. There is a penalty of 500*l.* for altering names. At the end of three months from the receipt of prize-money, the treasurer of Chelsea Hospital is required to notify in the 'London Gazette' and in two London morning papers that distribution will be made at the end of one month

In this notification the share of an individual in each class must be declared. Shares of prize-money due to a non-commissioned officer or soldier, will be paid only upon personal application, or to his wife, or child, father or mother, brother or sister, or to the regimental agent of his regiment, or to any other regimental agent. If discharged, a certificate must accompany the application, signed by the clergyman and one of the churchwardens or overseers. Personating or falsely assuming the name and character of a person entitled to prize-money with fraudulent intent is punishable with transportation for life, or not less than seven years. By 3 & 4 Vict. c. 65, the Privy Council may refer to the High Court of Admiralty matters concerning booty of war (property captured by land forces). The Prize Court of the Admiralty is the proper court for deciding on matters captured by naval forces. [ADMIRALTY COURTS, p. 29.]

#### PRIZE COURT. [ADMIRALTY COURTS.]

**PROBATE AND LEGACY DUTIES.** These duties yield a sum exceeding two millions a-year. The legacy duty is charged on legacies of the value of 20*l.* and upwards out of personal estate or charged upon real estate, and upon every share of residue. Legacy to a husband or wife is exempt from duty. To a child or parent, or any lineal descendant or ancestor of the deceased, the duty is 1*l.* per cent.; to a brother or sister or their descendants, 3*l.* per cent.; to an uncle or aunt or their descendants, 5*l.* per cent.; to a great uncle or great aunt or their descendants, 6*l.* per cent.; to any other relation or any stranger in blood, 10*l.* per cent. The probate duty is payable on the total sum left by the deceased. For sums above 20*l.* and not exceeding 100*l.* the duty is 10*s.* if there is a will; and if there is no will the duty of 10*s.* is chargeable on sums of 20*l.* and not exceeding 50*l.* The duties continue to increase according to a certain scale up to 1,000,000*l.* The following tables show the operation of the legacy and probate duties for nearly half a century; and in Porter's 'Progress of the Nation,' vol. iii. pp. 125-133, will be found some useful

and interesting considerations on these duties as indications of the progress of national wealth:—

Duty received from 1797 to 1845 inclusive.	Legacies.	Probates, Administrations, and Testamentary Inventories.	
		£.	£.
England . . .	36,696,279	29,110,230	
Scotland . . .	2,199,715	1,521,960	
Ireland . . .	829,499	1,182,705	
	£39,725,493	31,814,896	
Duty received in 1845	£.	£.	
		£.	£.
England . . .	1,178,866	963,322	
Scotland . . .	88,073	66,631	
Ireland . . .	61,629	65,852	
	£1,328,568	1,095,805	

Return, showing the Amount of Capital on which the several Rates of Legacy Duty were paid in Great Britain in the Year 1845, and an Abstract of the Total Amount paid under each Rate since 1797:—

1845.		1797-1845.	
Per Cent.	£.	Per Cent.	£.
1 <i>l.</i> . .	24,087,848	1 <i>l.</i> . .	662,775,286
2 <i>l.</i> 10 <i>s.</i> . .	152,493	2 <i>l.</i> . .	20,716,610
3 <i>l.</i> . .	14,599,335	2 <i>l.</i> 10 <i>s.</i> . .	70,683,131
4 <i>l.</i> . .	9,774	3 <i>l.</i> . .	348,364,319
5 <i>l.</i> . .	1,802,196	4 <i>l.</i> . .	12,666,479
6 <i>l.</i> . .	318,359	5 <i>l.</i> . .	50,804,505
8 <i>l.</i> . .	22,778	6 <i>l.</i> . .	17,797,836
10 <i>l.</i> . .	4,606,925	8 <i>l.</i> . .	11,813,294
		10 <i>l.</i> . .	143,798,047
Total .	£45,599,714	Total .	£1,339,419,511

**PROCESS VERBAL** (*Procès-verbal*) is a term derived from French jurisprudence, in which it signifies a memorandum or instrument drawn up and attested by officers of justice, containing a statement of the circumstances which have taken place upon the execution of a commission, upon an arrest, upon a precognition or preliminary examination of a party accused, or in the course of other legal investigations, and set forth in the order in which they have occurred. The term is now frequently applied to a contemporaneous detailed minute or note of any formal proceeding, though not occurring in the course of any legal inquiry; for instance, a note of the discussions which are taking place during the negotiation of a treaty.

**PROCLAMATION.** By the constitution of England, the king possesses the prerogative of issuing proclamations; for although this authority is exercised by the lord mayor in the city of London, and by the heads of some other corporations in other cities, for certain limited purposes, it is always founded upon custom or charter, and consequently only exists by delegation from the crown.

The nature and objects of royal proclamations are various. In some instances they are merely a promulgation of matters of state or of acts of the executive government which it is necessary that all persons should know, and upon notice of which, as presumed to be conveyed by a public proclamation, certain duties attach to subjects. Proclamations of the accession of a new king or a demise of the crown, and proclamations for reprisals upon a declaration of war with a foreign state, and for rendering coin current within the realm, are examples of this kind. Another class of proclamations consists of those which declare the intention of the crown to exercise some prerogative or enforce the execution of some law which may have been for a time dormant or suspended, but which a change of circumstances renders it necessary to call into operation. Thus the king might, by proclamation in the time of war, lay an embargo upon shipping, and order the ports to be shut, by virtue of his ancient prerogative of prohibiting any of his subjects from leaving the realm. [NE EXEAT REGNO.] A breach of the duty imposed or declared by a proclamation of this kind would be punishable, either as a contempt, or as a misdemeanor at common law. Another and the most useful class of proclamations issued by the crown consists of formal declarations of existing laws and penalties, and of the intention of government to enforce them, designed as some of the early books term it, *quoad terrorem populi*, and merely as admonitory notice for the prevention of offences. A familiar instance of this kind of declaration is the proclamation against vice and immorality appointed to be read at the opening of all courts of quarter-sessions.

At present the royal prerogative does not authorise the creation of an offence by proclamation which is not a crime by the law of the land; in the language of Sir Edward Coke (3 *Inst.*, 162), "Proclamations have only a binding force when they are grounded upon and enforce the laws of the realm." In early periods of our history after the Norman conquest, the power of the crown in this respect appears to have been much more extensive, and instances of proclamations may be found in Rymer's 'Fœdera,' and elsewhere, which imply an assumption of almost despotic power by the crown. In the reign of Henry VIII. it was enacted by the statute 31 Henry VIII. c. 8, that the king, with the advice of his council, might set forth proclamations under such penalties and pains as to them might seem necessary, which should be observed as if they were made by Act of Parliament; but this statute contained an express declaration that proclamations should not alter the law, statutes, or customs of the realm (Coke's *Reports*, part 12, p. 75), and was repealed about five years afterwards by the stat. 1 Edw. VI. c. 12. A strenuous attempt was made in the reign of James I. to strengthen the crown by increasing the prerogative of making proclamations, which, though encouraged and promoted by the lord chancellor Ellesmere and Bacon, was resisted by Coke, and occasioned great alarm and dissatisfaction among the people. The encroachments which had been made and attempted in this respect are enumerated and complained of in the 'Petition of Grievances' by the Commons, in 1610 (Howell's *State Trials*, vol. ii. p. 524); and in the same year it was expressly resolved by the judges (of whom Sir Edward Coke was one) that the king could not by his proclamation create an offence, which was not an offence before; 'for if so, he might alter the law of the land by his proclamation.' (Coke's *Reports*, part 12, p. 76.)

PROCTOR, an officer of the Ecclesiastical courts, whose business is that of an agent between his clients and the courts to which he is attached. It is a shortened form of the Roman term procurator. He

stands in a similar situation to that of an attorney at common law or a solicitor in chancery. There are about 120 proctors now practising in the several courts of Doctors' Commons, London, which are four in number, the Court of Arches, the Prerogative Court, the Consistory or Consistorial Court of the Bishop of London, and the Admiralty Court.

In commencing a suit in any of these courts, the proctor is appointed by a proxy executed by the client, by which he constitutes him his agent, and promises to confirm all his acts as by law required in such suit. The proctor then proceeds to collect the facts of the case, and to apply to the court in his client's behalf, to draw allegations and interrogatories, and summon witnesses, whose evidence is taken down in private by the examiners, who are proctors appointed for that purpose. This evidence is deposited in the registry of the court in which the suit is brought, and is not allowed to be seen by any party until such time as the court may think fit to order publication. No *vivâ voce* evidence is received in these courts. After the necessary information has been collected and arranged, the proctor prepares his client's case, to be put into the hands of the advocates, to be by them brought before the court, if they deem it advisable.

In the case of wills, or administrations with the will annexed, that is, where the deceased has left a will, but has not appointed any executor, the executors or administrators are sworn to the due execution of the will of the deceased: and they make affidavit as to the amount of property, time of death, and other like matters. The proctor then makes a copy of such will or papers, and places it before the registrar of the court to be compared with the original; the copy, when thus compared, is returned to him with the probate under seal of the court attached. In cases of administration, he delivers in a formal account of the claims of the parties who apply for letters of administration, with an affidavit as to the value of the property and other particulars, and prays the court to decree letters of administration also under seal

of the court. These instruments are then delivered to the executors or administrators, and are their authority for distributing the property of the deceased according to his will, or, in the absence of a will, according to law.

It is also the business of the proctor to obtain licences for marriage, on the application of either of the parties about to contract such marriage, and to draw an affidavit in which the party applying for the licence declares that he or she knows of no legal impediment to such marriage. It is the proctor's duty to explain the nature of this affidavit to his client, who is then sworn to the truth of it before one of the advocates, who are appointed surrogates, or deputies of the judge. The affidavit is then lodged in the Faculty Office, or office of the vicar-general, and licence obtained under seal: this licence remains in force for three months.

The proctor in many cases has to attest the acts of his client, and for this purpose he is appointed a notary public, but his power as such extends only to proceedings in his own courts, and not to the general business of a notary. The official title of a proctor is "notary public, and one of the procurators-general of the Arches Court of Canterbury and of the High Court of Admiralty."

The number of the proctors is prevented from increasing very rapidly by the restrictions on taking "clerk apprentices:" only the thirty-four senior proctors, and of them only such as are of five years' standing in such seniority, are allowed to take an articled clerk, and in no case to take a second until the first has served five years, and then only by permission of the court. The term of articleship is seven years, which is legally required on account of the notarial capacity in which they have to act. Notwithstanding these regulations, the number has materially increased. In the time of Charles II. there were only thirty-four procurators-general and ten supernumeraries. The proctors wear a gown as a badge of office in court, and in the Arches a cape trimmed with ermine in addition; and on certain occasions, such as upon admission or attending prayers

on the first day of Term, a wig similar to that of a barrister. They are exempted from serving as jurors or parish officers.

The appeal from these courts is to the Judicial Committee of the Privy Council, where the proctor conducts the case in the same way as in the courts of Doctors' Commons, but is obliged to call to his assistance a barrister, in addition to an ecclesiastical advocate. There is an appeal-court held in Doctors' Commons, but it is only for business preliminary to the cause being heard before the Privy Council.

The courts are held in the common hall of Doctors' Commons, situated in the College, in which are the official residences of the judges and advocates. The proctors have no inn, or regular locality, but are very inconveniently dispersed about the narrow streets near the college.

Attached to courts of the province of York and to the different bishops' courts are similar bodies of proctors, who differ only in trifling circumstances from those here described.

**PROCURATOR FISCAL.** [ADVOCATE, LORD.]

**PROFIT**, one of the three parts into which all that is derived from the soil by labour and capital is distributed, the other two parts being wages and rent: from these three sources arise all the revenues of the community. Profit is therefore the surplus which remains to the capitalist after he has been reimbursed for the wages advanced and the capital laid out during the process of production. To obtain this surplus is the only object for which capital is employed.

Profits have a tendency to fall to the same level in all branches of industry; for if the ratio of profit in proportion to the capital employed be greater in one than in another, more capital will be directed to that which affords the highest profit; and the powers of production being increased, the supply is greater, prices fall, and the equilibrium of profit is restored. When the employment of capital is attended with extraordinary risk, profits are nominally high; but after deducting the losses to which it is

exposed, the real profits tend to the same level as the ordinary rate. The pleasantness of a particular occupation may induce those who pursue it to be content with a low rate of profit. Unless we reduce profits from their apparent to their real value, there is no truth in the maxim that the rate of profit is uniform in the same country at the same time.

The natural tendency of profits (whether arising from capital employed in agriculture or in manufactures) is to decline as the necessities of the population render it necessary to have recourse to inferior soils. Happily, improvements in machinery and in the art of agriculture, better combinations of labour and capital, and greater freedom of commerce, are calculated to arrest this retrograde movement; and to such sources of relief every highly advanced country must look as a means for sustaining its prosperity; for whatever diminishes the necessity of raising food from the poorer soils, tends to maintain the rate of profit.

Two other causes have great influence upon the rate of profit, namely, wages and taxation. A rise in wages will diminish profits, unless industry becomes more productive; but if production is increased both may rise at the same time, either in the same or in different proportions according to circumstances.

Taxation will diminish profits, unless wages fall or industry become more productive. Taxes on profits, when they fall alike upon all capital engaged in productive industry, are paid by the owners of capital, who have not the power of charging the tax upon consumers. The means of accumulation are diminished when the profits of only certain classes of traders are taxed, and they would betake themselves to other occupations not taxed, unless they could charge the consumers with the tax: the tax therefore falls upon the consumers.

The effect of the competition of capitalists in reducing the rate of profit has not been much discussed by writers on political economy. Mr. McCulloch says:—"Competition cannot affect the productiveness of industry, and therefore has nothing to do with the average rate of profit." In reply to this assertion it has

been remarked (*Edin. Rev.*, No. 142, p. 443), that although the inferior fertility of newly cultivated soils be the immediate cause of the diminution of the rate of profit, yet it is nothing but the competition of capitalists which drives capital to seek the inferior soil, and induces its owners to be content with a lower rate of profit. The capitalists who had accumulated at the old rate of profit are content with a new investment producing a lower rate, instead of consuming their savings unproductively.

(Ricardo, *Principles of Political Economy and Taxation*, chaps. v. and xiii.; Mill, *Elements of Political Economy*, c. ii sec. 3; and c. iv. sec. 6; McCulloch's ed. of the *Wealth of Nations*, note vii.; *The Laws of Wages, Profits, and Rent investigated*, by Professor Tucker, Philadelphia, 1837.)

PROHIBITION, a writ to prohibit a court and parties to a cause then depending before it from further proceeding in the cause.

A writ of prohibition may issue from any of the three superior courts of common law at Westminster, and also from each of the common-law courts of Chester and Lancaster. It is generally stated that a writ of prohibition may issue from the Court of Chancery; but the Court of Chancery acts by injunction addressed only to the parties, and does not interfere with the court.

It may be addressed by any of the three superior courts to any other temporal court; such as the Admiralty Courts, to courts-martial, a court baron, any other inferior court in a city or borough, to the Cinque-Ports courts, the duchy or county palatine courts, the chancery of Chester, the Stannary courts, the Court of Honour of the Earl-Marshal, to the Commissioners of Appeals of Exchequer, to any court by usurpation without lawful authority, or to a court whose authority has expired. When any one has a citation to a court out of the realm, a prohibition lies to prevent his answering. It seems also that it might issue to the Court of Exchequer and to the Court of Common Pleas; but not to the Court of Chancery, nor is there any instance of a prohibition to the King's

Bench. It may be granted by any of the three superior common-law courts to any spiritual court, and by the common-law courts of Chester and Lancaster to the spiritual courts within the county palatine and duchy.

The writ is grantable in all cases where a court entertains matter not within its jurisdiction, or where, though the matter is within its jurisdiction, it attempts to try by rules other than those recognised by the law of England. Matter may be said to be not within the jurisdiction of a court in two senses: 1, when the subject-matter entertained is in its nature not cognizable by the court; 2, where the subject-matter is in its nature cognizable by the court, but lies out of the local district where only that court has jurisdiction; or, in the case of a court whose jurisdiction is general, when the subject-matter lies in a local district exempt from the general jurisdiction of the court or where the subject-matter of the cause relates to persons over whom the court has no jurisdiction. The subject of prohibition comprehends the circumstances under which it is grantable; the person who may obtain it, and the form and incidents of the proceeding; which heads belong to legal treatises.

If parties proceed after a writ of prohibition has been obtained and served, they are liable to an attachment for contempt.

(Comyns's *Digest*; Bacon's *Abridgment*; Viner's *Abridgment*; tit. "Prohibition," 2 *Inst.*, 599; 3 Blackstone, *Com.*, c. 7.)

The power of the common-law courts to issue writs of prohibition, and the mode in which they exercised that power, have often been the subject of great dispute between the common-law judges and the ecclesiastics. The ecclesiastics have several times exhibited many articles of grievance before the parliament and privy council against the common-law judges. The most famous of these are the "Articuli Cleri," exhibited by Archbishop Bancroft, in the name of the whole clergy, in the third year of the reign of James I. They are given at length by Lord Coke (2 *Inst.* 599), with



a full view of the nature of the controversy between the parties, and the unanimous answers of the judges.

A system of law which contains so many rules on Prohibition is an imperfect system. It does not seem inconsistent with the best system of law that a supreme court should have the power in certain cases of prohibiting inferior courts from exercising jurisdiction. The power however is most necessary in a country in which the law has been developed out of many incongruous and conflicting elements, and there is a variety of courts, each of which has a separate jurisdiction, the result of which is that the superior courts by a kind of necessity must sometimes interfere to prevent wrong being done.

PROLOCUTOR. [CONVOCATION.]

PROMISSORY NOTE. [EXCHANGE, BILL OF; MONEY.]

PROPERTY is derived, probably through the French language, from the Latin word *Proprietas*, which is used by Gaius (ii. 89) as equivalent to ownership (*dominium*), and is opposed to possession. [POSSESSIO.] The etymology of the word *proprietas* (*proprius*) suggests the notion of a thing being a man's own, which general notion is contained in every definition of property. A foreign writer defines ownership or property to be "the right to deal with a corporeal thing according to a man's pleasure, and to the exclusion of all other persons."

The definition excludes incorporeal things, which however are considered objects of property in our law, and were also considered as objects of property in the Roman law, under the general name of *jura* or *jura in re*; they were considered as detached parts of ownership, and so opposed to *Dominium*, a word which represented the totality of the rights of ownership. (Savigny, *Das Recht des Besitzes*, 5th ed., p. 166.) This definition also describes property as consisting in a right, by which word right is meant "a legal power to operate on a thing, by which it is essentially distinguished from the mere possession of the thing, or the physical power to operate upon it. Consequently such a right is not established by

the possession of the thing; and it is not lost when the possession of a thing is lost. Such a right can also be enforced by him who possesses the right by an *actio in rem* against every person who possesses the thing, or disputes his right to it." (Mackeldey, *Lehrbuch des heutigen Röm. Rechts*, ii. p. 1-36.) This definition, which is characterised by more precision than that of Blackstone (ii. 1), may be adopted, with this limitation, that to deal with a corporeal thing according to a man's pleasure, must not be such a dealing as will prevent other people from dealing with their property at their pleasure. The extent of this limitation is very indefinite; but such a limitation must be admitted as necessary. A man may destroy his own property if he likes, but the destruction must not be in such manner as to destroy any other man's property. By property then is here understood that which the positive law of a country recognises as property, and for the protection or recovery of which it gives a remedy by legal forms against every person who invades the property, or has the possession of it.

Austin observes ('An Outline of a Course of Lectures on General Jurisprudence') that "dominion, property, or ownership is a name liable to objection. For, first, it may import that the right in question is a right of unmeasured duration, as well as indicate the indefinite extent of the purposes to which the entitled person may turn the subject. Secondly, it often signifies property, with the meaning wherein property is distinguished from the right of possession. Thirdly, dominion, as taken with one of its significations, is exactly co-extensive with *jus in rem*, and applies to every right that is not *jus in personam*." The first sense of the word property is expounded by determining the quantity and quality of an estate as understood in English law. As to the second, possession is of itself no right, but a bare fact, and its relation to rights in *rem* is the same as the physical to the legal power to operate on a thing. The doctrine of possession is therefore distinct from and should precede the doctrine of property. The third sense of property has reference

to the legal modes of obtaining the possession of a thing in which a man can prove that he has property and a present right to possess.

A complete view of property, as recognised by any given system of law, would embrace the following heads, which it would be necessary to exhaust, in order that the view should be complete. It would embrace an enumeration of all the kinds or classes of things which are objects of property: the exposition of the greatest amount of power over such things as are objects of property, which a man can legally exercise—and connected with this, the different parts or portions into which the totality of the right of property may be divided or conceived to be divided: the modes in which property is legally transferred from one person to another, that is, acquired and lost: the capacity of particular classes of persons to acquire and transfer property as above understood; or, to take the other view of this division, an enumeration of persons who labour under legal incapacities as to the acquisition and loss of property.

The general division of property in the English law is into Things Real and Things Personal, the incidents to which are in many respects different in the system of English law.

Things Real are comprehended under the terms of Lands, Tenements, and Hereditaments. The word Hereditaments is the most comprehensive of these terms, because it comprehends every thing which may be an object of inheritance, both Things Real, and also some Personal Things, such as heirlooms, which are objects of inheritance.

Hereditaments are divided into Things Corporeal and Incorporeal. A Corporeal Hereditament is land, in the legal sense of the term. An Incorporeal Hereditament is defined by Blackstone to be "a right issuing out of a thing corporate (corporeal), whether real or personal, or concerning or annexed to, or exercisable within the same." Perhaps the definition is not quite exact, and it would not be easy to make an exact definition. The Things Incorporeal of the English law correspond in their general

character to the *Res Incorporales* of the Roman Law, one distinguishing character of which is that they are incapable of tradition or delivery (Gaius, ii. 28): the *Res Corporales* of the Roman Law are things which are capable of tradition, whether moveable, as a horse, or immoveable, as a house. The Incorporeal hereditaments enumerated by Blackstone are, Advowsons, Tithes, Commons, Ways, Offices, Dignities, Franchises, Corodies or Pensions, Annuities, and Rents.

The interest which a man can have in any land, tenement, or hereditament, is called an Estate; and this word comprises the greatest amount of power and enjoyment, both as to time and manner, which a man can legally have over and in any of the three things just enumerated, as well as the smallest legal amount of such power and enjoyment: it also comprises, under the notion of time, the determination of the period when his power and enjoyment shall commence, as well as when they shall cease. [ESTATE.]

With reference to an estate, the time during which the right of enjoyment continues is usually expressed by the term Quantity of Estate. The manner in which the enjoyment is to be exercised during this time is often expressed by the term Quality of Estate; thus a man may enjoy an estate solely or in joint-tenancy.

A person may have the estate both as to quantity and quality in the sense above explained, either with or without the right to the beneficial enjoyment. The person who has merely the Estate in quantity and quality has the bare legal Estate. He who has not the right to the Estate in quantity and quality, as above explained, but merely to the enjoyment of such estate, while the other has not, is said to have the equitable estate. The term quality of estate might be used to express this equitable interest; but inasmuch as we want a word to express the manner and mode of enjoying an estate as distinct from the time of enjoyment, and as quality is the word used to express that manner and mode, it must not be used in a different sense.

It has been said that this distinction between legal and beneficial or equitable property is peculiar to the English law. (Lord Mansfield, 1 *T. R.*, 759, n.) But these two kinds of property existed in the Roman law, and the theory of the division of ownership or property into Quiritarian or legal, and bonitarian, beneficial, or equitable, was fully developed. Its origin in the Roman law is not certain; but it is a probable conjecture that its origin so far resembled the origin of the like division in English law, that it was due to the attempt to get rid of the difficulties attending the alienation of property by the old legal forms. "There is," says Gaius (ii. 40), "among other nations (*peregrini*) only one kind of ownership or property (*dominium*), so that a man is either owner or not; and it was the same in the old Roman law, for a man was either owner '*ex jure quiritium*,' or he was not. But ownership was afterwards divided, so that one man may now be owner of a thing *ex jure quiritium*, and another may have the same thing in *bonis*. For if in the case of a *res mancipi*, I do not transfer it to you by *mancipatio*, or in *jure cessio*, but only deliver it, the thing indeed will become yours beneficially (in *bonis*), but it will remain mine legally (*ex jure quiritium*), till you have acquired the property by *usucapion*; for as soon as the time of *usucapion* is completed, from that time it begins to be yours in full ownership (*pleno jure*), that is, the thing begins to be yours both in *bonis* and in *jure*, just as if it had been transferred by *mancipatio* or in *jure cessio*." This passage seems to suggest a conjecture as to the origin of the distinction between legal and equitable property which was of so much importance in Roman law. The distinction between the two kinds of ownership or property was as clearly marked as in our system, though it was not applied to all the purposes to which this divided or double ownership is applied in our system.

A view of the modes in which property is legally transferred from one person to another, and of the legal capacity of persons to transfer and acquire estates in lands and tenements, belongs to legal treatises.

Personal Property is not sufficiently described by the term "movables," for certain estates in land are personal property, and are comprehended under the term *Chattels Real*. [*CHATTELS*.] Terms for years are an example of chattels real; and they pass together with the rest of a man's personal estate to the executor, the universal successor. *Chattels Personal* are all other personal property, and are said by Blackstone "to be properly and strictly speaking things *moveable*, which may be annexed to or attendant on the person of the owner, and carried about with him from one part of the world to another. Such are animals, household stuff, money, jewels, coin, garments, and everything else that can properly be put in motion, and transferred from place to place." Personal property as thus defined corresponds to the *mobilia* or *res mobiles* of the Roman law; but this is a very inadequate description of personal property as recognised by the English law. And herein we first perceive the greater certainty and distinctness of the law relating to real property compared with the law relating to chattels; the things which can be the objects of real property are defineable, as well as the estates that can be had in them; the things that can be the objects of personal property are hardly determinable, and the estates, or more properly the interests, which a man may have in them, are perhaps also less determinate. As examples of objects of personal property, which in no way come within Blackstone's description, we may instance patent-rights and copyrights, which are things incorporeal, though not hereditaments, and are the objects of property in a sense.

A quantity of stock in the public funds is not money, though often talked of as such, but still it is property in a sense for it is a legal right to a perpetual annuity paid by the State, and it is a thing that can be bought and sold. Even debts due to a testator or intestate are considered as property with respect to probate and letters of administration; still they are not expressed by the term goods and chattels in the letters of administration, but by the term "credits," for as debts

are not the property of a man to whom they are due, until he gets them, so they cannot become property simply because he happens to die.

The system of the English law as to the nature of property is peculiar, and the modes in which it can be acquired and transferred are also in many respects peculiar, especially in the case of Real Estate. The discussion of these matters properly belongs to legal treatises.

Property in Chattels may, like property in Things Real, vary as to quantity and quality of interest, though things personal are not capable of such extended and various modifications, analogous to estates, as things real are. As to quantity, that is, duration, a man may have the use of a personal thing for life, and another may have the absolute property in it after his death. As to quality, persons may own a thing personal as joint tenants and as tenants in common. There is an equitable property in chattels as well as in things real. Money, for instance, is often paid to a trustee, in order that he may give the interest of it to one person for life, and after his death pay the money to another. The trustee, so long as he holds the money, has the legal property in the money, and in the thing in which the money is invested. A legatee has only an equitable interest, even in a specific legacy, after his testator's will is proved, until the executor gives the thing to him, or in some clear way admits his right to it.

Property in a thing must not be confounded with a faculty or power to dispose of the thing in certain ways. A man may have a power to do a certain act with reference to property, without having any property in the thing; or he may have a property in the thing of a limited quantity, and also a power to dispose of the thing in a certain way. Thus a tenant for life, who has only a limited property in land, may have a power given to him to make leases, subject to certain conditions, of the property of which he is tenant for life.

The property which is called copyright or patent is not strictly property. It consists in a power to do certain acts, as to produce and sell a certain work or

print or machine; and the power or faculty is made effective by the duty imposed on everybody else of abstaining from making and selling such things. The things that are produced by virtue of such a power are objects of property, but the copyright or patent right is merely a power or faculty which is given exclusively to a determinate person or persons for a determinate time.

The notion of property is universal, though the particular rules as to property vary in different countries. Society rests on two things chiefly, marriage and the notion of property. The notion of marriage varies in different countries, but there is perhaps no set of people among whom it does not exist in some form. It is the foundation of the notion of a family, an essential element of a State. In fact the notion of marriage implies a species of property, which consists in the exclusive dominion which a man thereby obtains over a woman's person, and over the children which are the fruit of their union. A community of women is a thing as impossible as a community of property, to which the mass of mankind have an invincible repugnance founded on the natural desire of man to appropriate things to his own use. Fixed rules then for the acquisition and maintenance of property are essential to the existence of society and of government: without such rules there would be anarchy. Those who are suffering from abject poverty, and those who wish to enjoy without labour, may not recognise the necessity of these fixed rules: they have often a vague notion that they would gain something by the destruction of all existing appropriations of the wealth of society. But all or nearly all who have any property cannot fail to see that they would certainly lose something by such a change and might gain nothing. Those who see still more clearly into the nature of human society, know that there can be no increase of the national wealth, of which all industrious people receive a share, if those who labour are not secured in the enjoyment of that which they obtain by their labour. The enormous disparities which exist in most countries between the wealth of those

who have more than they can use and the pittance of the great mass who live by their daily toil, often make even reflecting people for a moment imagine that things might be better arranged. But careful consideration finally establishes a general conviction that hard and stern as the laws are which punish all infringement of the rights of property, they are absolutely essential to the existence and well-being of society. The degree of the penalties and punishments which are inflicted on those who break the rules which guard each man's property, may often be excessive, and property may be better maintained by moderate than by excessive punishment. But all experience and all sound reason combine to prove that the maintenance of the most unbounded wealth that an individual can acquire is as much the interest of every member of society as the maintenance to the poorest man of his daily earnings. No limits can consistently with the general interest be placed on a man's power to acquire property by the employment of his capital, his industry, and his skill. Some limits may be properly put, but it is very difficult to say what they should be, on his power of giving that which he has acquired, and on his power of making dispositions of it which shall extend beyond his own life. [PRIMOGENITURE.]

PROPERTY TAX. [TAX.]

PROROGATION. [PARLIAMENT.]

PROSTITUTION. The history of prostitution would make a curious chapter in the history of society. It appears that in all countries and in all ages there have been women who have prostituted their bodies for hire. The practice has been viewed in very different lights in different countries, but probably in all countries it has been attended with a certain degree of infamy.

As marriage and the formation of a family are the foundation of all society, anything which checks marriage or encourages promiscuous intercourse, must be considered as opposed to the general interest. But prostitution in some form or degree will probably always exist; and the object of good government should be to make such regulations, if any, as may reduce it to the least amount. There

is a difference between concubinage, or the regular cohabitation of unmarried persons, and that promiscuous intercourse which is fornication. Concubinage may externally appear a marriage, and the evil to society from bad example or disorderly conduct may be entirely absent, though there are reasons enough why it may often offend against good order and decency. The main disadvantage of concubinage in a political view is that the woman is deprived of all those rights to which marriage entitles her, and the children are exposed to neglect. It is, however, a thing which is best left to the control of positive morality. If the positive morality of any given society discountenances it, that is a sufficient check: if the positive morality looks on it as a matter of indifference, legislative enactments will be ineffectual.

The same principles do not apply to prostitution. The laws of all well regulated societies should interfere so far at least as to prevent open indecency and check any disturbance which may be caused in houses to which persons resort for fornication. But here also the positive morality of society will be the strongest check, when the positive morality of the mass is opposed to the irregular connection of the sexes. The practice of licensing prostitutes and subjecting them immediately to the control of the police is at least a matter of doubtful policy. Where it has long existed, there may be reasons for continuing this system; but there are weighty reasons against introducing it into any society where it has not been long established.

The most efficient check to prostitution will be the improvement of the early education of females of the poorer classes, from among whom the great mass of prostitutes come. The solicitation of chastity proceeds from the male, and the temptation is money, which gives a woman the hope of living without labour and of indulging in dress and other things which her station in life does not allow her. The immediate inducements which lead women to surrender their chastity are no doubt as numerous and various as their condition and dispositions. But the temptation of money operating upon po-

verty and on the ignorance and inexperience of young women is certainly the most powerful of the causes of seduction. Those who would direct their efforts towards diminishing an evil which can never be entirely removed will succeed best by attempting to remove the main causes of it; by supporting every measure which will give to the labouring classes better wages, and secure to them a better and more practical education than they now receive.

As the solicitation of a woman's chastity proceeds from the male, whose passions are generally much stronger, seduction and its usual consequence, prostitution, would be most effectually checked by operating upon the propensities of the male. But it is not easy to suggest any efficient mode of doing this. All good education will contribute to this end by forming men to habits of greater self-control, and accustoming them to view the consequences to the whole of society as well as to themselves of every act of their lives.

The English law has few regulations on this subject, and it is very doubtful if any good would be effected by additional legislation. Brothels, or bawdy-houses, which is the name of houses kept for the resort of men and women, are common nuisances; and persons who keep such houses are punishable by fine and imprisonment. Fornication itself is an illegal act, and punishable in the spiritual courts. In the session of 1849, an attempt was made criminally to punish the practices known to be resorted to by infamous persons to procure the defilement of women and young females. By this act, the 12 & 13 Viet. c. 76, it is provided, that if "any person shall by false pretences, false representations, or other fraudulent means, procure any woman or child under the age of twenty-one years to have illicit carnal connexion with any man, such person shall be guilty of a misdemeanor," punishable by imprisonment, with hard labour, for a term not exceeding two years. Some other attempts to legislate further on this subject only show the ignorance of those who think that because a law is made it will for that reason be efficient.

PROTEST. [EXCHANGE, BILL OF.]

PROTESTANT, a general term comprehending all those who profess Christianity, and are not in the communion of the Church of Rome. There is a great variety of opinion among the persons thus separated, in points of faith, church order, and discipline, but this term comprehends them all.

The term originated in Germany. At the diet at Spire, in 1525, decrees had been passed which were so far favourable to the progress of the Reformation that they forbade any peculiar measures against it. The consequence was that the spirit of reformation gained strength, and spread itself more extensively in Germany. Then arose also commotions which were attributed to the reformed and to the spirit kindled by them. Both the pope and the emperor looked with increasing alarm on the aspect of affairs; and at another diet, held at the same place in 1529, the emperor directed an imperial brief to the persons assembled, to the effect that he had forbidden all innovation, and proscribed the innovators in matters of religion, who had notwithstanding increased since the decrees of 1526, but that now, by virtue of the full powers inherent in him, he annulled those decrees as contrary to his intentions. The peremptory tone of these letters alarmed the persons who were present at the diet; and particularly the elector of Saxony is reported to have said to his son that no former emperor had used such language, and that he ought to be informed that their rights were more ancient than the elevation of his family.

This strong measure of the emperor had also the effect of uniting, at least on this point, the two great sections of the German reformers, the Lutherans and the Sacramentarians, of whom Zuinglius was the head. However, the party opposed to the Reformation was the stronger, and the emperor's brief received the sanction of the diet. Upon this the reformers declared that this was not a business of policy or temporal interests, with respect to which they were ready to submit to the will of the majority, but it affected the interests of

conscience and futurity. On this and other grounds they founded a *protest*, which was delivered in on the 13th day of April, but refused by the rest of the diet. A second protest, larger than the former, was presented on the succeeding day. The princes and the cities who favoured the Reformation joined in it, and thenceforth it became usual to call the reformers *Protestants*.

It is often found that a particular occasion leads to the construction of a name for a religious party, which becomes extended, as in this instance, to parties who have no immediate connection with the particular incident, or interest in the question with which it is connected. The term Protestant in fact seems to have as much to do with the constitution of the Germanic confederacy as with the principles of the Reformation: and certainly neither England nor Scotland had any thing to do with the proceedings of the emperor or with the diet of Spire. The term Reformed Church might seem to designate the church of England or the church of Scotland more appropriately than the Protestant church.

PROVINCIAL COURTS. [ECCLESIASTICAL COURTS, p. 802.]

PROVOST, a term having its origin apparently in the Latin *propositus*, which denotes the chief of any society, body, or community. In France the corresponding word *prévôt* approaches nearer the original form. In that country it is applied to the persons who discharge the functions of many different offices, but in England it is rarely used: we believe the only instances are those of the heads of certain colleges, as Eton, King's College (Cambridge), &c. But in Scotland it is used to designate the chief officer in cities, as the provost of Edinburgh or of Glasgow, where in England the same officer is called the mayor.

PROVOST-MARSHAL, a term adopted from the French, who call an officer with similar functions, the *prévôt des maréchaux de France*, or at least did so before the Revolution. The English provost-marshal is attached to the army, his duty being to attend to offences committed against military discipline, to seize and secure deserters and other criminals,

to restrain the soldiery from pilfering and rapine, to take measures for bringing offenders to punishment, and to see to the execution of the sentences passed upon them.

PROXY. [LORDS, HOUSE OF; PARLIAMENT; PEERS OF THE REALM.]

PUBLIC HEALTH. [TOWNS, HEALTH OF.]

PUBLIC PROSECUTOR. [ADVOCATE, LORD.]

PUFFERS. [AUCTION.]

PUNISHMENT. The verb to *punish* (whence the noun substantive *punishment*) is formed from the French *punir*, according to the same analogy as *furnish* is formed from *fournir*, *tarnish* from *ternir*, *finish* from *finir*, &c. The French *punir* is derived from the Latin *punire*, anciently *pœnire*, which is connected with *pœna* and the Greek *poînê* (ποινή). *Pœnê* signified a pecuniary satisfaction for an offence, similar to the *wergeld* of the German codes: *pœna* had doubtless originally a similar sense; but in the Latin classical writers its meaning is equivalent to that of our word *punishment*.

Punishment may be inflicted on men by a supernatural being or by men; and it may be inflicted on them either in the present life, or in the existence which commences after death. Punishment may likewise be inflicted by men on the more intelligent and useful species of animals, such as horses and dogs. In the following remarks, we confine ourselves to punishment inflicted by man on man.

The original idea of punishment was, pain inflicted on or endured by a person as a satisfaction or atonement by him for some offence which he had committed. (Grimm, *Deutsche Rechtsalterthümer*, p. 646.) According to this conception of punishment, it appeared to be just that a person should suffer the same amount of pain which he had inflicted on others by his offence; and hence the origin of the retaliatory principle of punishment, or the *lex talionis*. This principle is of great antiquity, and is probably the earliest idea which all nations have formed concerning the nature of punishment. It occurs among the early Greeks, and was attributed by them to their

mythical prince and judge of Hades, Rhadamanthys. They embodied it in the following proverbial verse:—

ὅτι καὶ πάροιτε καὶ ἐξέζη. δίκην καὶ λήϊα γένοιτο.  
(*Aristot., Eth. Nic., v. 8.*)

The *talis* was also recognized in the Twelve Tables of Rome (*Inst.*, iv. 4, § 7), and upon it was founded the well-known provision of the Mosaic law, “an eye for an eye, and a tooth for a tooth:” a maxim which is condemned by the Christian morality. (*Math.*, v. 38-40; and Michaelis, *Commentaries on the Laws of Moses*, vol. iii. art. 240-2).

The infliction of pain for the purpose of exacting a satisfaction for an offence committed is *vengeance*, and punishment inflicted for this purpose is *vindictive*.

By degrees it was perceived that the infliction of pain for a vindictive purpose is not consistent with justice and utility, or with the spirit of the Christian ethics; and that the proper end of punishment is not to avenge past, but to prevent future offences. (Puffendorf's *Droit de Nature et des Gens*, viii. 3, § 8-13; Blackstone's *Commentaries*, vol. iv. p. 11.)

This end can only be attained by inflicting pain on persons who have committed the offences; and as this effect is also produced by vindictive punishment, vindictive punishment incidentally tends to deter from the commission of offences. Hence Lord Bacon justly calls revenge a sort of wild justice.

But inasmuch as the proper end of punishment is to deter from the commission of offences, punishment inflicted on the vindictive principle often fails to produce the desired purpose, and moreover often involves the infliction of an unnecessary amount of pain. All punishment is an evil, though a necessary one. The pain produced by the offence is one evil; the pain produced by the punishment is an additional evil; though the latter is necessary, in order to prevent the recurrence of the offence. Consequently a penal system ought to aim at economizing pain, by diffusing the largest amount of salutary terror, and thereby deterring as much as possible from crimes, at the smallest expense of punishments actually inflicted; or (as the idea is con-

cisely expressed by Cicero), “ut metus ad omnes, pœna ad paucos, perveniret.” (*Pro Cluentio*, c. 46.)

It follows from what has been said, that it is essential to a punishment to be *painful*. Accordingly, all the known punishments have involved the infliction of pain by different means, as death, mutilation of the body, flogging or beating, privation of bodily liberty by confinement of various sorts, banishment, forced labour, privation of civil rights, pecuniary fine. The punishment of death is called *capital* punishment: other punishments are sometimes known by the name of *secondary* punishments. Moreover, the pain ought to be sufficiently great to deter persons from committing the offence, and not greater than is necessary for this purpose.

A punishment ought further to be, as far as the necessary defects of police and judicial procedure, will permit, *certain*; and also, as far as the differences of human nature and circumstances will permit, *equal*.

If a punishment be painful, and the pain be of the proper amount, and if it be likewise tolerably equal and certain, it will be a good punishment.

The qualities just enumerated are those which it is most important that a punishment should possess. But it is sometimes thought desirable that a punishment should possess other qualities than those which we have enumerated.

1. Since the time when it has been generally understood that punishment ought not to be inflicted on a vindictive principle, the deterring principle of punishment (which necessarily involves an infliction of pain) has been sometimes overlooked, and it has been thought that the end of punishment is the reformation of the person punished. This view of the nature of punishment is erroneous in excluding the exemplary character of punishment, and thus limiting its effects to the persons who have committed the offence, instead of comprehending the much larger number of persons who may commit it. The reformation of convicts who are suffering their punishment is an object which ought to enter into a good pena<sup>1</sup> system; but it is of subordinate



importance as compared with the effect of the punishment in deterring unconvicted persons from committing similar offences.

2. It is likewise sometimes thought that punishment is inflicted for the purpose of getting rid of offenders, or of rendering them physically incapable of repeating their offence. Death has often been inflicted for this purpose; and bodily disablements of various sorts have been inflicted for the same end; transportation has likewise been recommended on the ground of its getting rid of convicts. This view of punishment errs in the same manner as that just examined; inasmuch as it is confined to the persons who have actually committed offences. If all offenders were removed to a place of reward, they would be got rid off, but not punished. The principle of getting rid, or confinement, for the purpose of protecting society against the known dangerous tendencies of a person, is properly applicable in the case of insane persons.

A detailed account of the punishments which have been used in different nations may be found in different works on antiquities and law books. See, for the Greeks, Wachsmuth's *Greek Antiquities*, vol. ii., part 1, p. 181; Hermann's *Greek Antiquities*, § 139; for the Romans,—Haubold's *Lineamenta*, § 147; for the ancient Germans and for Europe generally in the middle ages.—Grimm's *Deutsche Rechtsalterthümer*, b. v., ch. 3; for modern France, *Le Code Pénal*, liv. 1; and for England, Blackstone's *Commentaries*, vol. iv.

The subject of *Secondary Punishments* (the principal of which are in this country transportation and imprisonment) is treated under TRANSPORTATION. We will here make a few remarks on the subject of *Capital Punishments*.

An idle question is sometimes raised as to the right of a government to inflict death as a punishment for crimes, or, as it is also stated, as to the lawfulness of capital punishment. That a government has the power of inflicting capital punishment cannot be doubted; and in order to determine whether that power is rightfully exercised, it is neces-

sary to consider whether its infliction is, on the whole, beneficial to the community. The following considerations may serve to determine this question respecting any given class of crimes. Death is unquestionably the most formidable of all punishments; the common sense of mankind and the experience of all ages and countries bear evidence to this remark. Moreover, capital punishment effectually gets rid of the convict. It may be added, as subordinate considerations, that death is the cheapest of all punishments, and that it effectually solves all the difficult practical questions which arise as to the disposal and treatment of convicted criminals. On the other hand, capital punishment, from its severity and consequent formidableness, is likely to become unpopular; and hence, from the unwillingness of judges and juries to convict for capital offences, and of governments to carry capital sentences into effect, uncertain. Whenever the infliction of capital punishments becomes uncertain, their efficacy ceases, and they ought to be mitigated. An uncertain punishment is not feared, and consequently the pain caused by its actual infliction is wasted. Capital punishments ought therefore to be denounced only for crimes which would not be effectually prevented by a secondary punishment, and for which they are actually inflicted with as much constancy as the necessary defects of a judicial procedure will allow.

The writings on the subject of punishment, and particularly of capital punishment, are numerous. Sound opinions on the nature and end of punishment are contained in the works of Grotius and Puffendorf; but Beccaria's well-known treatise first applied an enlightened spirit of criticism to the barbarous penal system of the continental states, but it cannot be read with much profit at the present time. The best systematic work on the subject is Bentham's *Théorie des Peines*, edited by Dumont. Some valuable remarks on the subject of punishment may likewise be found in the recent writings of Archbishop Whately and others respecting transportation.

**PURCHASE**, which is corrupted from the Latin word *Perquisitio*, is defined by Littleton (i. 12) to be "the possession of lands or tenements that a man hath by his deed or agreement, unto which possession he cometh not by title of descent from any of his ancestors, or of his cousins (*consanguinei*), but by his own deed." Purchase as thus defined comprehends all the modes of acquiring property in land by deed or agreement, and not by descent: but it is not a complete description of purchase, as now understood, for it omits the mode of acquisition by will or testament, which however, when Littleton wrote, was of comparatively small importance, as the power of devising lands did not then exist, except by the custom of particular places. Blackstone makes the following enumeration of the modes of purchase—Escheat, Occupancy, Prescription, Forfeiture, and Alienation. As to escheat, there is some difficulty in the classification, as the title appears to be partly by descent and partly by purchase; and alienation is here used in a larger sense than that which this term has in the Roman law, in which it does not comprehend acquisition by testament. Generally then, purchase is any mode of acquiring lands or tenements, except by Descent. [DESCENT.]

**PURSER.** [NAVY.]

**PURVEYANCE** (*purveyance*, a providing), a prerogative formerly enjoyed by the King of England, of purchasing provisions and other necessities for the use of the royal household, and of employing horses and carriages in his service in preference to all other persons, and without the consent of the owners. The persons who acted for the king in these matters were called *purveyors*. A privilege of the same nature was also exercised by many of the great lords. The parties whose property was thus seized were entitled to a recompense; but what they received was inadequate, and many abuses were committed under the pretext of *purveyance*. About forty statutes were passed upon the subject, many of them, like all the important early statutes, being a re-enactment of those preceding. Some of the most strict occur in the 36th year of Edward

III. The parliament of that year, which is said to have been held 'for the honour and pleasure of God, and the amendment of the outrageous grievances and oppressions done to the people, and the relief of their estate,' after a general confirmation of former statutes, immediately proceeds to enact five statutes on the subject of *purveyance*. These statutes confine the exercise of it to the king and queen, and provided that for the future 'the heinous name of *purveyor* shall be changed into that of *buyer*:' they forbid the use of force or menaces, and direct that where *purveyors* cannot agree upon the price, an appraisement shall be made, &c. &c. The provisions of these statutes are very full, but they appear to have wholly failed in their operation, and other statutes were passed without effect. Several of the charges against Wolsey were the exercise of *purveyance* on his own behalf. (4 *Inst.* 93.) In the time of Elizabeth, two attempts were made in the same year by the Commons to regulate the abuses of *purveyance*. The queen was extremely indignant at this, and desired the Commons not to interfere with her prerogative. During the first parliament of James I., Bacon, on presenting a petition to the king, delivered his famous speech against *purveyors*, which forms a sort of compendium of the heavy charges made against them. Several negotiations took place in that reign for the purchase of the prerogative of *purveyance*, but nothing was done. Under the Commonwealth it fell into disuse. *Purveyance* was not formally abolished till after the Restoration. By the 12 Ch. II., c. 24, this branch of the prerogative was surrendered by the king, who received in lieu of it a certain amount payable on excisable liquors. Probably in the earlier periods of our history the existence of *purveyance* was almost necessary for the support of the royal household, especially during the progresses which were then so frequent. This seems almost a necessary inference from its continuance in spite of so many attempts to suppress it. Even after its final abolition by the statute Charles II. several temporary statutes were passed.

and in that and the succeeding reign, for its partial revival on the occasion of royal progresses. On behalf of the navy and ordnance, a statute to that effect occurs as late as 11 and 12 Will. 3. (Camden, 388; Bacon's *Works*, vol. vi. p. 3, Montagu's edit.; Hume's *Hist.*; 1 Bl. *Com.*, 287; 3 *Inst.*, 82; 4 *Inst.*, 273.)

## Q.

QUALIFICATION. [GAME LAWS.]

QUALITY OF ESTATES. [PROPERTY.]

QUANTITY OF ESTATES. [PROPERTY.]

QUARANTINE. Quarantine regulations are regulations, chiefly of a restrictive nature, for the purpose of preventing the communication from one country to another of contagious diseases, by means of men, animals, goods, or letters. The term *quarantine* originally signified a period of forty days during which a person was subject to the regulations in question. The period of forty days during which a widow entitled to dower can remain in her husband's mansion-house after his death is also called, in our law, the widow's quarantine. (Blackstone's *Commentaries*, vol. ii. p. 135.)

Quarantine regulations consist in the interruption of intercourse with the country in which a contagious disease is supposed to prevail, and in the employment of certain precautionary measures respecting men, animals, goods, and letters coming from or otherwise communicating with it. Men and animals are subjected to a probationary confinement, and goods and letters to a process of depuration, in order to ascertain that the contagious poison is not latent in the former; and to expel it, if it be present, in the latter. Quarantine regulations respecting *men* and *animals* are therefore founded on the assumption that the contagious poison, after having been taken into the constitution of a man or an animal, may remain dormant in it for a certain time, and that a seclusion of a certain duration is necessary in order to allow the disease time to

show itself, or to afford a certainty that the disease is not latent. Quarantine regulations respecting *goods* and *letters* are founded on the assumption that the contagious poison may be contained in goods and letters, and transmitted from them so as to communicate the disease to men.

The country from which the introduction of a contagious disease is apprehended, may either be conterminous with the country which establishes the quarantine regulations, or may be divided from it by the sea. Accordingly quarantine lines may either be drawn round a coast, as is the case in France, Italy, and Greece, with respect to the Levant, or they may be drawn along a land frontier, as on the frontier between Austria and Servia and Wallachia.

The contagious diseases which quarantine regulations are intended to guard against are plague and yellow-fever, and latterly cholera.

The principal disease, with reference to quarantine regulations, is the *plague of the Levant*; and in practice quarantine regulations are of little importance except with respect to the intercourse by land and sea with Turkey, Asia Minor, and Egypt, and some other of the Mohammedan countries bordering on the Mediterranean.

The disease styled plague, although formerly prevalent over the whole of Europe, is now nearly confined to the Levant; but its symptoms, morbid changes, history, and mode of propagation, bear so close a resemblance to those of the malignant typhus of this country, that it is difficult to regard them otherwise than as different types of the same disease. The plague of the Levant appears likewise to be generated by the same causes which generate typhus in this country, namely, filthy, crowded and ill-ventilated dwellings, want of personal cleanliness, defective drainage, and insufficient or unwholesome food. We believe it to be certain that, when the disease has been thus generated, it may, particularly under the influence of any of the causes which originally produced it, be communicated from one person to another. It seems likewise that its communication from one

person to another is promoted not only by filth, want of ventilation, and the other usual accompaniments of squalid poverty, but also by certain atmospheric causes, such as a certain state of heat, moisture, &c., respecting which we are as yet imperfectly informed. The plague therefore is both epidemic and contagious; that is to say, it may either be generated by local causes, which simultaneously affect a large number of the inhabitants of a country, or it may be communicated directly from one person to another. Where a disease is both epidemic and contagious, it is difficult to determine what proportion of the cases of it are due to local causes and what proportion to contagion. The analogy of typhus in this country would lead us to believe that the number of cases of plague in the plague countries produced by contagion is small as compared with the number produced by local causes. The invisible nature of the ordinary causes of plague and other epidemic diseases, and the simultaneous seizure of many persons in the same district, the same street, or the same house, have naturally led to the belief that the disease is in every case communicated from one person to another; according to the fallacy ingeniously exposed by Dr. Radcliffe, who, on being asked his opinion respecting the contagiousness of epidemic diseases, answered: "If you and I are exposed to the rain, we shall both be wet; but it does not follow that we shall wet one another."

This view of the ordinary causes of plague is likewise confirmed by the undoubted fact that the poor are the chief sufferers by it, and that it prevails most in the filthiest and worst quarters of towns.

From the fact of the plague prevailing principally among the poor, and rarely attacking the rich, it may be inferred either that the plague is produced exclusively by the filth, crowding, and bad food to which the poor are subject; or that if it be contagious, the contagion does not in general take effect upon the inhabitants of spacious and well ventilated houses, who are clean in their persons, orderly in their habits, and have a sufficient supply of wholesome

food. We see that diseases which appear to be contagious under nearly all circumstances, prevail equally among the rich and poor; and that none of the physical advantages possessed by the latter afford any security against it. Thus, before the introduction of vaccination, small-pox was equally destructive to persons of all ranks in society; and the contagious diseases which attack children, as measles and hooping-cough, make no distinction between the children of the rich and the poor.

There seems to us to be no reasonable doubt that the plague is contagious—in other words, that it can be communicated directly from one person to another—provided there be circumstances favourable to its transmission. A quarantine for persons may therefore be expedient for countries where the spread of the plague, supposing it to be introduced, is not improbable. The duration of this quarantine ought to depend upon the time during which the disease may be latent in a person who has taken it by contagion or otherwise.

Since the plague is a peculiarly malignant and destructive fever, and runs its course with a rapidity far greater than typhus, there seems a fair ground for concluding that its poison would not be long latent in the human body. The answers to the protomedico of Malta respecting the plague in Malta of 1813, state that "the periods at which the disease made its appearance in different individuals after communication were various. It was generally from the third to the sixth day; sometimes longer, even to the fourteenth day, but not latter." (Dr. Maclean, *On Epidemic and Pestilential Diseases*, vol. ii. p. 29.) M. Ségur Dupeyron, the secretary of the Council of Health in France, states, in his Report on Quarantine to the Minister of Commerce (May, 1834), that "the physicians who have made a close study of the plague are pretty generally of opinion that its poison cannot be latent in the human body more than fifteen days; and the cases of plague introduced into the lazarettoes confirm this opinion" (p. 48). We believe that the cases of plague which have of late years occurred

in the lazarettoes of Valletta, Marseille, and Leghorn have broken out either at sea or shortly after the ship's arrival. When the line of French steamers was first established, in 1837, between Marseille and the Levant, it was arranged that the steamers coming from the Levant should perform their quarantine at Marseille. But in consequence of several cases of plague having broken out on board the steamers before they could reach Marseille, the French government decided that they should perform their quarantine at the nearest practicable station, namely Malta.

It is commonly assumed that actual or nearly actual contact is necessary in order to communicate the plague. "All measures against the plague (says M. de Ségur Dupeyron) are founded on the opinion that, except within a very small distance from the body, contact alone can give the disease. Consequently goods taken from ships with different bills of health are often placed in the same warehouse; and physicians who have visited plague-patients, without having touched them, are not put in quarantine, and are permitted to go about immediately after their visit" (p. 76). We believe the idea that actual contact is necessary for the communication of the plague to be utterly erroneous; and we entertain no doubt that under circumstances favourable to its communication, such as filth, crowding, and want of ventilation, the poison of the plague might be introduced into the human body by inspiration through the lungs. We account for the escape of the physicians, guardians, and others, who come within a short distance of the plague-patients in lazarettoes, by the supposition that with the isolation, cleanliness, and good ventilation of a well-managed lazaretto, the contagion of the plague is exceedingly feeble.

With respect to the quarantine of animals, it may be remarked that, according to the belief commonly received in the Mediterranean, all living animals are capable of communicating the plague. Accordingly horses, asses, cattle, and sheep are placed in quarantine upon their importation. There is, we believe,

an idea among the Franks resident in the plague countries, that the horse cannot communicate the poison of the plague, but that it is frequently communicated by other animals, especially by cats. (See Maclean, vol. i. p. 202.) We suspect that there is no foundation for the notion that plague can be communicated by means of animals.

Goods carried in ships or by land are subject to quarantine, according as they belong to the class of susceptible or non-susceptible goods. Goods which are supposed to be capable of containing and transmitting the poison of the plague are called *susceptible*. Goods which are supposed to be incapable of containing and transmitting the poison of the plague are called *nonsusceptible*. All animal substances, such as wool, silk, and leather, and many vegetable substances, such as cotton, linen, and paper, are deemed susceptible. On the other hand, wood, metals, and fruits are deemed non-susceptible. In Venice an intermediate class, subject to a half quarantine, is introduced between susceptible and nonsusceptible goods (Ségur Dupeyron, p. 70); but this classification appears to be peculiar to the Austrian dominions. All susceptible goods are unladen in the lazaretto, and are there exposed to the air, in order to undergo a process of depuration.

The grounds of the received distinction between susceptible and nonsusceptible articles must, we conceive, be altogether fanciful; since we cannot discover any evidence that the plague has ever been communicated by merchandise. Whenever the plague has been introduced into the lazarettoes of the Mediterranean, it has always been introduced by passengers or their clothes (Ségur Dupeyron, pp. 45-48). It may be added, that persons employed in the process of depurating susceptible goods have never been known to catch the plague, which could scarcely have failed to be sometimes the case, if the poison of the plague could be transmitted through goods. (See answer 28 of the Maltese Protomedico, in Maclean, vol. ii. p. 31.) It seems to be likewise supposed that some substances are not only nonsusceptible, but

can even nullify the poison of the plague in susceptible articles. "At Trieste (says M. de Ségur Dupeyron), the juice of dried grapes is considered as a purifier; and consequently currants in susceptible wrappers are allowed to pass without the wrappers being subjected to any quarantine" (p. 72).

There appears, however, to be conclusive evidence that the clothes and bedding of plague-patients have transmitted the plague (Dupeyron, p. 32-71). We believe the danger of its transmission in this manner to be equal to the danger of its transmission by passengers.

We are not aware of any well authenticated example of the transmission of the plague by means of letters. Nevertheless, as paper is considered susceptible, letters coming from and passing through the plague countries, are opened and fumigated at the lazarettoes—a process which is often productive of mistakes, delays, and other inconveniences.

Every ship is furnished by the consul or other sanitary authority at the last port where it touched, with an instrument, styled a bill of health, declaring the state of health in that country. If the ship brings a clean bill of health, the passengers and goods are not subject to any quarantine. If she brings a foul bill, they are subject to quarantines of different durations, according as the plague is known or only suspected to have existed in the country at the ship's departure. On account of the prevalence of plague in the countries upon the Levant, they are considered as permanently in a state of suspicion, and no ship sailing from any of them is considered to bring a clean bill. The periods of quarantine vary from two or three to forty days; the usual periods are from ten to twenty days.

The building in which passengers usually perform their quarantine, and in which goods are depurated, is called a lazaretto. The most spacious and best appointed lazarettoes in the Mediterranean are those at Malta and Marseille.

The institution of quarantine originated at Venice, in which city the expediency of some precautions against

the introduction of the plague was suggested by its extensive commercial relations with the Levant. A separate hospital for persons attacked by the plague was established in an island near Venice, in 1403; and the system of isolating passengers and depurating goods appears to have been introduced there about 1485. The system thus established in Venice gradually spread to the other Christian countries in the Mediterranean, and has been adopted to a greater or less extent, over all the civilised world. (See Beckmann's 'History of Inventions,' art. 'Quarantine,' vol. ii. p. 145.)

It is much to be desired that the plan of an inquiry, by competent medical authority, into the grounds of the existing quarantine regulations in the Mediterranean, to be conducted under the direction of the chief European powers (which has been suggested by M. de Ségur Dupeyron, Dr. Bowring, and others), should be adopted. It cannot be expected that the causes of plague and the mode of its communication will receive any light from the semi-barbarians who inhabit the Mohammedan countries of the Levant. Moreover, quarantine regulations cannot be changed without the consent of different nations which are concerned in their enforcement. The reason why it is necessary for a nation to adapt its quarantine regulations to the received opinions upon the subject, is explained in the following extract from a paper respecting quarantine regulations in the Mediterranean, which was printed in the Malta 'Government Gazette' of the 19th December, 1838:—"The quarantine regulations of the English colonies in the Mediterranean cannot be changed by the simple will of the English government without producing inconveniences far greater than those arising from the existing system. If the English government should change the quarantine regulations of Malta and its other colonies in the Mediterranean without previously obtaining the approbation of the sanitary authorities of the neighbouring countries, the pratique granted in those colonies would not be received elsewhere; and all vessels coming from any of those colonies would be sub-

jected to a quarantine of observation (from eight to fifteen days). The latter liability would attach to the ships of the royal navy as well as to the merchant vessels; so that no ship of war sailing from Malta could communicate with any part of France, Italy, or Austria, without being previously subjected to a quarantine of observation. Malta, in particular, would suffer most severely by being unable to give an effectual pratique to ships performing quarantine in the harbour of Valletta, and by subjecting all ships clearing out of that harbour to a quarantine of observation. Not only would its transit-trade be almost completely destroyed, but it would lose its importance as a quarantine station. Its importance as a quarantine station is now daily growing, on account of the establishment of the French steamers to the Levant, and the use of the overland journey to India. It would, however, cease to be a quarantine station if its pratique were not received by the Board of Health at Marseille, and by the other sanitary authorities of the Mediterranean. In order therefore that the quarantine regulations of the English colonies in the Mediterranean might be safely altered, it would be necessary that the alterations should be made in concert with the governments of the neighbouring European countries."

The small states of Italy are suspected (and, we fear, with justice) of abusing quarantine regulations for the purpose of preventing commercial intercourse, and also for the sake of the profit to be made by farming out the quarantine dues.

The heads of the English law respecting quarantine are contained in the 6 Geo. IV. c. 78. This Act also confers upon the queen in council extensive powers for making quarantine regulations. A full official abstract of the regulations established by this statute, and of the orders in council made under it, may be seen in McCulloch's *Commercial Dictionary*, article 'Quarantine.'

QUARE IMPEDIT. [BENEFICE, p. 338.]

QUARTER-SESSIONS. [SESSIONS.]

QUEEN. The Saxon *crēn*, which was used to denote *mulier, femina, conjux*,

as well as women of the highest rank. The use of it to denote a princess who reigns in her own right, and possesses all the powers which belong to a male person who has succeeded to the kingly power in a state, is a modern application of the term.

In England the king's wife has some peculiar legal rights. She can purchase lands, and take grants from the king her husband; she has separate courts and officers, including an attorney-general and a solicitor general; she may sue and be sued apart from her husband, have separate goods, and dispose of them by will. She pays no toll, is not subject to amercement, has a share in fines made to the king for certain privileges, which last is called queen's gold. Anciently manors belonging to the crown were assigned to her in dower, but now the provision for her is made by a parliamentary grant at the time of marriage. It is treason to compass or imagine the death of the king's wife. To violate or defile her person is also treason, though she consent; and if she do consent, she also is guilty of treason. It has been the usual practice to crown the queen with the same kind of solemnities as are used at the coronation of a king. In the case of Caroline, the wife of George IV., who was living at the time apart from her husband, this was not done; but her right was most ably argued at the time by Mr. Brougham before the privy-council.

If a queen dowager marry a commoner, she does not lose her rank; but no one, it is said, can marry a queen dowager without special licence from the king.

A queen regnant, or princess who has inherited the kingly power, differs in no respect from a king. [KING.]

QUEEN CONSORT. [QUEEN.]

QUESTMEN. [CHURCHWARDENS.]

QUILA EMPTORES. [FEUDAL SYSTEM.]

QUI TAM ACTIONS. These have sometimes been called Popular Actions. A Popular Action is defined to be an action founded on the breach of a penal statute, which every man may sue for himself and the king. It is called a Qui tam action from the words used in the process; "*qui tam pro domino rege*

sequitur quam pro se ipso," "who sues as well for our lord the king as for himself." In a Qui tam action part of the penalty goes to the suer or informer, and part to the king. A strange instance occurred in 1844 of the legislature interfering to stop certain Qui tam actions against gamblers. [GAMING, p. 58, 59.] See also INFORMER.

QUIT RENT. [RENT.]

QUORUM. [SESSIONS.]

## R.

RANGER (*Rangeator*), an ancient officer in the king's forests and parks, appointed by patent, and enjoying certain fees, perquisites, and other advantages. His duty was of three kinds: 1, to make daily perambulations, to see, hear, and inquire concerning any wrong doings in the limits of his bailiwick; 2, to recover any of the beasts which had strayed beyond the limits of the forest or chase; and, 3, to present all transgressions at the next forest court.

RANSOM. [AIDS.]

RAPE. [LAW, CRIMINAL.]

RATE. an assessment levied upon property. Rates are of various kinds, and are denominated with reference to the objects to which they are applied.

The nature of Church-rates is explained under CHURCH-RATES: and rates for the relief of the poor under POOR-LAWS. The subject of County-rates is explained under COUNTY-RATES. There are also rates levied for the construction and repair of Sewers; and for other purposes.

READER, READINGS. [BARRISTER.]

REAL ESTATE. [PROPERTY.]

REBELLION. [SOVEREIGNTY.]

RECEIPT. In its more general and popular sense Receipt means a written discharge of a debtor on the payment of money due. When given for sums greater than five pounds, it must be stamped. The amount of the stamp duty varies with the sums for which it is given from 3d. to 10s.: in Ireland the lowest stamp is 2d. and the rates are otherwise

different from those in Great Britain. A receipt, though evidence of payment, is not absolute proof, and this evidence may be rebutted by showing that it has been given under mistake or obtained by fraud. The object of requiring a stamped receipt is to obtain revenue, and no other. It is one of the many modes of taxation. In 1832 the revenue from receipt stamps amounted to 193,065*l.*, namely: England 154,466*l.*; Scotland 16,344*l.*; Ireland 22,254*l.* The amount received in England on each kind of stamp was as follows:—

At	Os. 3	.	£19,940
0	6	.	31,286
1	0	.	42,995
1	6	.	22,466
2	6	.	16,790
4	0	.	6,939
5	0	.	5,408
7	6	.	4,143
10	0	.	4,495

(Impey's Stamp Act; 55 Geo. III. c. 184; 3 & 4 Wm. IV. c. 23.)

RECEIVING STOLEN GOODS.

[LAW, CRIMINAL.]

RECIPROCITY ACT. [SHIPS.]

RECOGNIZANCE is an obligation of record, entered into before some court of record, or magistrate duly authorised, by which the party entering into it (the cognizor), whose signature is not necessary, acknowledges (recognizes) that he owes a sum of money to the king, or to some private individual, who is called the cognizee. This sum is named the amount of the recognizance. The acknowledgment is generally followed by an undertaking on the part of the cognizor to do some act, such as to keep the peace, to pay a sum of money, to attend to give evidence, and the like. On the performance of this act, the cognizor is discharged from his recognizance. On his default, the recognizance is forfeited, and he becomes indebted absolutely to the amount of the recognizance. A debt on recognizance takes precedence of other debts, and binds the lands of the cognizor from the time of its enrolment. If the recognizance is made to a private individual in the nature of a statute staple, for instance, he may on its forfeiture, by virtue of process directed to the sheriff, obtain delivery of



the lands and goods of the cognizor till the debt is satisfied, or proceed against the cognizor in an action of debt, or by scire facias. If the recognizance is made to the king, it was formerly, in all cases of forfeiture, estreated into the exchequer, and afterwards recovered by process from that court to the use of the treasury. But now, in the cases of forfeited recognizances taken before the court of quarter-sessions, or justices of the peace, provision is made by stats. 3 Geo. IV. c. 46, and 4 Geo. IV. c. 37, for their enrolment among the sessions records, and their immediate recovery by the sheriff. A list of the amounts, &c. is yearly returned by the clerks of the peace and town-clerks for their districts respectively, to the lords of the treasury. A power of appeal by the cognizor against the forfeiture is given to the sessions, and the sheriff is not to levy on the cognizor till the appeal has been decided. Where a recognizance has been estreated into the exchequer, that court may discharge or compound it according to the justice of the case. (Comyns, *Dig.*, "Recognizance;" Dalton; 2 Blackstone, *Com.*; Burn's *Justice*.)

#### RECORD, COUNTS OF. [COURTS.]

RECORDER (*Recordator*), a judge, described by Cowel as "he whom the mayor or other magistrate of any city or town corporate having jurisdiction, or a court of record, within their precincts by the king's grant, doth associate unto him for his better direction in matters of justice and proceedings according to law." The Norman term, *recordeur*, appears to have originally been applied to every person who was present at a judicial proceeding, and to whose remembrance or record of what had taken place the law gave credit in respect of his personal or official weight and dignity. Of this we perceive a trace in the ordinary writ of *Accedas ad Curiam*, by which the sheriff is commanded to go to some inferior court (which, not being the king's court, is not a court of record), taking with him four knights, and there to record the plaint, which is in that court: the remembrance of the four knightly recorders of what they saw existing in the inferior court, in obedience to the king's writ, being treated as equivalent to their

actual presence at the proceeding to be recorded. So if the proceedings are in the sheriff's court, he is ordered by the writ of *Recordari facias loquelam* to cause the plaint to be recorded by four knights. And by a record of the eighth year of King John, we find that a judgment of battle in the court of the Archbishop of Canterbury being vouched in the king's courts, four knights were sent to inspect the proceedings, who returned "*quod recordati sunt.*" (*Placitorum Abreviatio*. 54.) The practice of certifying and recording the customs of London by the mouth of the recorder, which is antecedent to the charters granting or recognising the practice, appears to be referrible to the same source. Where criminal or civil jurisdiction was exercised by citizens or burgesses, it would add to the importance of the court if its proceedings took place in the presence of an officer to whose record the superior courts would give credit, either in respect of his personal rank, as a peer or knight, or on account of his connection with those courts, as a serjeant or barrister-at-law.

Since 1835 the duties of recorders in cities and boroughs enumerated in the schedules of the Municipal Corporations Act (5 & 6 Wm. IV. c. 70) have been regulated by the provisions of that and of subsequent statutes.

The jurisdiction of the recorder in places of minor importance than those mentioned in the schedules, is taken away. These Acts do not affect the city of London.

The recorder of London is a judge who has criminal and civil jurisdiction. He is also the adviser and the advocate of the corporation. In respect of the duties performed by the recorder in the assemblies of the corporation, in the courts of mayor and aldermen, of common council, and of common hall, his office may be said to be ministerial. He is by charter a justice of the peace within the city of London, and a justice of oyer and terminer, and a justice of the peace, in the borough of Southwark.

The business of the mayor's court, in which the recorder ordinarily presides alone, comprehends a court of equity. In the mayor's court the recorder tries

civil causes, both according to the ordinary course of common law and the peculiar customs of the city. The amount for which such actions may be brought is unlimited. Causes depending in the superior courts at Westminster for sums under 20*l.*, writs of trial are occasionally ordered to be executed by a judge of a court of record in London under statute 3 & 4 Wm. IV. c. 42, s. 17. Such trials sometimes take place before the recorder, and sometimes before the judges of the sheriffs' court.

All the duties of a justice of the peace, including those of chairman, devolve upon the recorder at the quarter and other sessions held at Guildhall for the city of London. At the eight sessions which are held in the year at Justice-hall in the Old Bailey for the metropolitan district, the recorder acts as one of the judges under her majesty's commission of oyer and terminer, and general gaol delivery. At the conclusion of each session he prepares a report of every felon capitally convicted within the metropolitan district, for the information and consideration of the queen in council, and he issues his warrant for the reprieve or the execution of the criminals whose cases have been reported.

The fixed annual salary of the recorder is 1500*l.* The Common Council have added 1000*l.* annually to the salary of the present recorder, and to that of his immediate two predecessors. Besides this, the recorder has fees on all cases and briefs which come to him from the corporation. He is also allowed to continue his private practice.

The recorder is elected by the court of aldermen, most commonly at a special court held for the purpose. Any alderman may put any freeman of the city in nomination as a candidate for the office, but an actual contest seldom takes place. The recorder elect is admitted and sworn in before the court of aldermen. The appointment is during good behaviour. The recorder has always been a serjeant-at-law or a barrister.

The recorder of London deriving his authority from charters, and not being appointed by commission (except temporarily as included with other judges in

the commission of oyer and terminer, &c., at the Old Bailey), he is not, like the judges of the superior courts, liable to dismissal by the crown upon an address by both Houses of Parliament. But all recorders may be removed for incapacity or misconduct by a proceeding at common law.

Deputy recorders have in some instances, but not very lately, been appointed by the court of aldermen on the nomination of the recorder. (*Report on Municipal Corporations.*)

In cities and boroughs within the Municipal Corporations Act, the recorder (who must be a barrister of not less than five years' standing) is a judge appointed under the sign manual by the crown during good behaviour: he has criminal and civil jurisdiction within the city or borough, with precedence next to the mayor.

Criminal jurisdiction is given to recorders by the Municipal Corporations Act, explained by subsequent statute. The 105th section of that Act provides that the recorder shall hold once in every quarter of a year, or at such other and more frequent times as he shall in his discretion think fit, or as the crown shall think fit to direct, a court of quarter-session of the peace, at which the recorder shall sit as the sole judge, and such court shall be a court of record, and shall have cognizance of all crimes, offences, and matters whatever cognizable by any court of quarter-session of the peace for counties in England, provided nevertheless that no recorder shall have power to make or levy any rate in the nature of a county-rate, or to grant licence to keep an ale-house or victualling-house, to sell excisable liquors, or to exercise any of the powers by that Act specially vested in the town-council.

The jurisdiction of the county sessions extends, under 34 Edw. III. c. 1, to the trying and determining of all felonies and misdemeanors. The commission under which county justices are appointed, however, directs that if any case of difficulty arise, they shall not proceed to judgment but in the presence of one of the justices of the courts of King's Bench or Common Pleas, or of one of the justices

of assize; and courts of quarter-session in counties have latterly treated every case in which judgment of death would be pronounced upon conviction, as a case of difficulty, and have left such cases to be tried at the assizes; and though no such direction is contained in the grant of the office of recorder or in the Municipal Corporations Act, it has been the invariable practice of recorders appointed under the Act to refrain from the exercise of jurisdiction in such cases.

The civil jurisdiction given to recorders by 5 & 6 Wm. IV. c. 76, § 118, is to try actions of assumpsit, covenant, or debt, whether by speciality or by simple contract, and all actions of trespass or trover for taking goods or chattels, provided the sum or damages sought to be recovered do not exceed 20*l.*, and all actions of ejectment between landlord and tenant wherein the annual rent of the premises does not exceed 20*l.*, and upon which no fine has been reserved, with an exception of actions in which title to land, or to any tithe, toll, market, fair, or other franchise is in question in courts, which before the passing of the Act had not authority to try actions in which such titles were in question. This enactment does not take away the more extended civil jurisdiction which previously existed in particular cities and boroughs by prescription or by charter.

The practice, or mode of proceeding, and also the course of pleading, in courts of civil jurisdiction in cities and boroughs, are governed by rules made by the recorder and allowed by three judges of the superior courts.

**RECORDS, PUBLIC.** Records, in the legal sense of the term, are contemporaneous statements of the proceedings in those courts of law which are courts of record, written upon rolls of parchment. (Britton, c. 27.) Matters enrolled among the proceedings of a court, but not connected with those proceedings, as deeds enrolled, &c., are not records, though they are sometimes in a loose sense said to be "things recorded." In a popular sense the term is applied to all public documents preserved in a recognised repository; and as such docu-

ments cannot be conveniently removed, or may be wanted in several places at the same time, the courts of law receive in evidence examined copies of the contents of public documents so preserved, as well as of real records. [COURTS; RECORDER.]

We may consider that as a record which is thus received in the courts of justice. The Act, for instance, which abolished Henry VIII.'s court of augmentation (of the revenues obtained from the suppression of the religious houses), declared that its records, rolls, books, papers, and documents, should thenceforth be held to be records of the court of exchequer; and accordingly we have seen many a document, originally a mere private memorandum, elevated to the dignity of a public record, on the sole ground of its official custody, and received in evidence as a record of the Augmentation-office. On the other hand, numbers of documents which were originally compiled as public records, having strayed from their legal repository to the British Museum, have thereby lost their character of authenticity. (*Proceedings of the Privy Council*, vol. v. p. 4, edited by Sir Harris Nicolas.)

"Our stores of public records," says Bishop Nicolson, "are justly reckoned to excel in age, beauty, correctness, and authority, whatever the choicest archives abroad can boast of the like sort." (Preface to the *English Historical Library*.) Indeed, this country is rich beyond all others of modern Europe in the possession of ancient written memorials of all branches of its government, constitutional, judicial, parliamentary, and fiscal, memorials authenticated by all the solemn sanctions of authority, telling truly, though incidentally, the history of our progress as a people, and handed down in unbroken series through the period of nearly seven centuries. The amount of public care given to this subject during the last forty years, is shown by the appointment of successive commissions and parliamentary committees of inquiry, by a cost in one shape or another amounting to little less than a million of pounds sterling, and by the passing of an Act of Parliament designed to effect a thorough

change in the system of keeping and using the public records.

The greater part of records are kept as rolls written on skins of parchment and vellum, averaging from nine to fourteen inches wide,\* and about three feet in length. Two modes of fastening the skins or membranes were employed, that of attaching all the tops of the membranes together bookwise, as is employed in the exchequer and courts of common law, whilst that of sewing each membrane consecutively was adopted in the chancery and wardrobe.

The material on which the record is written is generally parchment, which, until the reign of Elizabeth, is extremely clear and well prepared. From that period until the present, the parchment gradually deteriorates, and the worst specimens are furnished in the reigns of George IV. and William IV. The earliest record written on paper, known to the writer, is of the time of Edward II.

The handwriting of the courts, commonly called court-hand, which had reached its perfection about the reign of our second Edward, differs materially from that employed in chartularies and monastic writings. As printing extended, it relaxed into all the opposites of uniformity, clearness, legibility, and beauty which it once possessed. The ink too lost its ancient indelibility; and, like the parchment, both handwriting and ink are the lowest in character in the latest times: with equal care, venerable Domesday will outlive its degenerate descendants.

All the great series of our records, except those of parliament, are written in Latin, the spelling of which is much abbreviated, and in contractions, there can be little doubt, derived from Latin manuscripts.

During the Commonwealth, English was substituted; but soon after the Restoration, Latin was restored, and the records of the courts continued to be kept in Latin until abolished by Act of Parliament in the reign of George II. In certain branches of the Ex-

chequer, Latin continued in use until the abolition of the offices in very recent times. Many of our statutes from Edward I. to Henry V., and the principal part of the rolls of parliament, are written in Norman French. Petitions to parliament continued to be presented in Norman French until the reign of Richard II., whose renunciation of the crown is said to have been read before the estates of the realm at Westminster first in Latin and then in English. After this period we find English, which had doubtless always remained in use among the lower classes, often used in transactions between the people and government.

At the present time, besides the offices for modern records attached to each court, we may enumerate the following repositories, with their different localities, as containing the public records:—

The Tower, in Thames-street; Chapter-House, Westminster Abbey; Rolls Chapel, Chancery-lane; Rolls House, Chancery-lane; Duchy of Lancaster, Lancaster-place, Strand; Duchy of Cornwall, Somerset House; Common Pleas, Carlton Ride and Whitehall-yard; Queen's Remembrancer's Records, in Carlton Ride and tower of Westminster Hall; Augmentation-Office, Palace-yard, Westminster; Pipe-Office, Somerset House; Lord-Treasurer's Remembrancer, Somerset House; Land Revenue, Carlton Ride; Pell-Office, 1, Whitehall-yard; Exchequer of Pleas, 3, Whitehall-yard; First-Fruits Office, Temple.

The fullest examination into the state of the public records which has been made in recent times was effected by a Committee of the House of Commons, in 1800, conducted by Lord Colchester, then Mr. Abbot, and the report of that Committee presents the most comprehensive account which has yet appeared of our public records, to which a period of forty years has added very little. This Report originated a commission for carrying on the work which its authors had begun. The Record Commission was renewed six several times between the years 1800 and 1831, and altogether suspended at the accession of the present

\* The rolls of the Great Wardrobe exceed eighteen inches in width.

queen. All the several record commissions during thirty years recited, one after another, that "the public records of the kingdom were in many offices unarranged, undescribed, and unascertained;" that they were exposed "to erasure, alteration, and embezzlement," and "were lodged in buildings incommodious and insecure." The commissioners were directed to cause the records to be "methodised, regulated, and digested," bound and secured; to cause "calendars and indexes" to be made and "original papers" to be printed. The present state of the Record Offices affords abundant evidence, that the record commissioners interpreted their directions in an inverse order; they expended the funds intrusted to them rather in printing records than in arranging or calendaring them. And it is an undoubted fact that not withstanding these commissions, records were "embezzled"—and are still lodged in most "insecure" buildings. A full investigation into the proceedings of the record commission was made by a Committee of the House of Commons in 1835, and the Report of the Committee was printed. During the last half-century there has been no niggard expenditure in respect of the public records. It is not easy to ascertain its total amount or the precise appropriation of it; but the following may be received as an approximation to correctness:—

Parliamentary Papers show that grants were made on behalf of the Record Commission between 1800 and 1831, to the amount of .	£362,400
Between 1831 and 1839 inclusive . . . . .	125,700
Salaries, &c., for the custody of Records . . . . .	120,000
Fees, estimated on an average of the years 1829, 1830, and 1831, at least . . . . .	120,000
Removals of Records, estimated at . . . . .	30,000
	<hr/>
	758,100
Irish Record Commission, estimated at . . . . .	120,000
	<hr/>
	£878,100

Of the grants made to the record commission, by far the greater part was spent in printing and the expenses connected therewith.

An Act was passed (1 & 2 Vict. c. 49) calculated to remedy effectually what preceding efforts had in vain attempted, by constituting a special agency for the custody of the records; to the want of which and a sufficient responsibility, all the defects of the old system are attributable. By this Act the Master of the Rolls is made the guardian of the public records, and he has powers to appoint a deputy, and, in conjunction with the treasury, to do all that may be necessary in the execution of this service. The Act contemplates the consolidation of all the records, from their several unfit repositories, into one appropriate receptacle; their proper arrangement and repair; the preparation of calendars and indexes, which are more or less wanting to every class of records; and giving to the public more easy access to them. Lord Langdale, the present Master of the Rolls, to whose influence the change of system is greatly due, has already brought the above Act into as full operation as circumstances have allowed. The old custodyship of most of the offices has been superseded, and the offices are constituted branches of one central depository, the Public Record Office, which, until a proper building is ready, is at the Rolls House in Chancery Lane. The arrangement and repair, as well as the making of inventories of records, have been generally begun in most of the offices.

Preparations are also making for a uniform system of calendaring, a gigantic work which a century will hardly see completed. To select what is useful from the judgments of a single court, the Common Pleas for instance, at least 1200 miles of parchment nine inches wide must be patiently read through; and yet without the performance of this labour these records can scarcely be consulted.

The principal changes which have been made for the better accommodation of the public may be seen in the following table:—

*System before July, 1840.*

Office.	Hours of Attendance.	Charges for			<i>Present System.</i>
		Search.	Inspection of Record.	Copy of Record.	
Tower . . . . .	10 till 3	10s.	6s. 8d.	1s. per folio	Attendance 10 till 4. Search in all Indexes, Calendars, &c., 1s. Inspection of a Record 1s. Copies 6d. per folio. The public may make extracts or copies in pencil, hitherto forbidden or allowed as a favour.
Rolls Chapel . . . . .	10 till 3	1s. a year } ea. name }	2s. 6d. } ea. Roll }	5s. 6d. a sheet	
Chapter House . . . . .	10 till 1	8s. 4d.		1s. per folio	
Carlton Ride . . . . .	10 till 4	3d. a term			
(Common Pleas) . . . . .	In term-time only	2s. 6d. in Index		6d. per folio	
3, Whitehall Yard, Common Pleas . . . . .	No attendance				
Exch. of Pleas . . . . .	No attendance	3d. a term		6d. per folio	
King's Bench (Rolls House) . . . . .	No attendance	2s. 6d. in Index			

The best work of general reference as to the subjects to which the public records relate is the 'Report of the Select Committee in 1800.'

RECRUITING is the act of raising men for the military or naval service. As to the military service, recruiting is done by officers appointed for the purpose, who engage men by bounties to enter as private soldiers into particular regiments. The officers, commissioned and non-commissioned, while so employed, are said to be on the recruiting service; but the actual engaging of men as recruits is called enlistment. The laws relating to this subject have been already noticed. [ENLISTMENT.]

Formerly private persons were allowed to enlist men for the army in any way that they might think best; but now, by a clause in the Mutiny Act, any person advertising or opening an office for recruits without authority in writing from the adjutant-general or the directors of the East-India Company is liable to the penalty of twenty pounds.

In order to produce uniformity in the system of recruiting, and to ensure the employment of legal means only in ob-

taining men, the supreme control of this branch of the military service was vested in the adjutant-general of the army, and both Great Britain and Ireland were divided into several recruiting districts. To each of these were appointed an inspecting field-officer; an adjutant, whose duty it is to ascertain, in respect of stature and bodily strength, the fitness of any recruit for the service; a paymaster; and a surgeon, the latter of whom is to report concerning the health of the recruit. Under the inspecting field-officer there are several regimental officers who are stationed in the principal towns of the different recruiting districts in order to superintend the non-commissioned officers appointed to receive the applications of the persons who may be desirous of entering the service.

In order to procure recruits, a serjeant or other non-commissioned officer mixes, in country places, with the peasantry at their times of recreation; and, in towns, with artisans who happen to be unemployed, or who are dissatisfied with their condition; and, by address in representing whatever may seem agreeable in the life of a soldier, or by the allurements of

a bounty, occasionally induces such persons to enter the service.

The reports concerning the fitness of a recruit for military service are finally submitted for approval to the inspecting field-officer of the district, except when the distance of the head-quarters from the place where the recruit is enlisted is such that it would be more convenient to send the latter to the *dépôt* of the regiment to which he is to belong: in that case the officer commanding at the *dépôt* is especially authorised to sanction them.

Officers employed on the recruiting service are not allowed to interfere with one another in the performance of their duties; particularly, no one is permitted to use any means in order to obtain for his own party a man who has already taken steps by which he may become engaged to another.

RECTOR, RECTORY. [BENEFICE, p. 341.]

RECUSANTS are persons who refuse or neglect to attend divine service on Sundays and holidays, according to the forms of the Established church.

There were four classes of offenders under the statutes against recusancy:—those who absented themselves from the public service of the church from indifference, irreligion, or dissent, were termed “recusants” simply—after conviction they were styled “recusants convict;” those absentees who professed the Roman Catholic religion were called “Popish recusants;” and those who had been convicted in a court of law of being Popish recusants were called “Popish recusants convict.”

Popish recusants, in addition to the general penalties enacted against recusants, were disabled from taking lands, either by descent or by purchase, after eighteen years of age, until they renounced their errors. They were bound at the age of twenty-one to register the estates which they had already acquired, and were bound also to register all future conveyances and wills relating to them. They were and are incapable of presenting to any advowson, and of making a grant of the right of presenting at any avoidance of the benefice. They could

not keep or teach any school, on pain of perpetual imprisonment. For the offence of saying mass, the Popish recusant forfeited 200 marks, or 133*l.* 6*s.* 8*d.* For the offence of wilfully hearing mass, he forfeited 100 marks (66*l.* 13*s.* 4*d.*), and was in each case subjected to a year's imprisonment.

Popish recusants convict incurred additional disabilities, penalties, and forfeitures. They were considered as persons excommunicated: they could not hold any public office or employment; they were not allowed to keep arms in their houses; they were prohibited from coming within ten miles of London, under the penalty of 100*l.*; they could bring no action at law or suit in equity; they were not permitted to come to court, under pain of 100*l.*, or to travel above five miles from home except by licence, upon pain of forfeiting all their goods. Severe penalties were imposed in respect of the marriage or burial of the Popish recusant convict, or the baptism of his child, if the ceremony was performed by any other than by a minister of the Church of England. Such a recusant, if a married woman, forfeited two-thirds of her dower or jointure, was disabled from being executrix or administratrix of her husband, and from having any part of his goods, and she might be kept in prison, unless her husband redeemed her at the rate of 10*l.* per month, or by the profits of the third part of all his lands. The present state of the law as to recusants is given under LAW, CRIMINAL, p. 217.

REDEMPTION, EQUITY OF. [MORTGAGE.]

REEVE. [SHERIFF.]

REFORMATION, HOUSES OF. [TRANSPORTATION.]

REGALIA, the ensigns of royalty. This term is more especially used for the several parts of the apparatus of a coronation. In England, the regalia properly so called are the crown, the sceptre royal, the virge, or rod with the dove, St. Edward's staff, the orb or mound, the sword of mercy, called Curtana, the two swords of spiritual and temporal justice, the ring of alliance with the kingdom, the armillæ or bracelets, the spurs of chivalry, and sundry royal vestments. The regalia

here enumerated, all but the vestments, are preserved in the Jewel-Office in the Tower of London. Before the Reformation in the time of Henry VIII. they were constantly kept by the religious of the abbey of Westminster; and are still presented before the king on the morning of the coronation by the dean and prebendaries of that church.

**REGENT, REGENCY.** These words, like *rex*, contain the same element as *rego*, "to rule," *regens*, "ruling;" and denote the person who exercises the power of a king without being king, and the office of such a person, or the period of time during which he possesses the power. Wherever there has been an hereditary kingly office, it has been found necessary sometimes to appoint a regent. The cases are chiefly those of (1) the crown devolving on a minor too young to execute any of the duties belonging to it; (2) mental incapacity of the person in whom the kingly office is vested; (3) temporary illness, where there is a prospect of the long continuance of the disease, and of incapacity in consequence; (4) absence from the realm. But in the first case the regent has usually been called in England by the name of Protector; the latest instance was the minority of Edward VI., when his uncle, the Duke of Somerset, was the Protector.

In the earlier periods of English history we have several instances of protectors during minorities, and some of regencies during the temporary absence of the king. The occasional absences of George I. and George II. on visits to their continental dominions rendered the appointment of regents a matter of convenience, if not of necessity. Sometimes the power was put, so to speak, in commission, being held by several persons jointly; but Queen Caroline sometimes discharged the functions of regent during the absence of George II. [**LOARDS JUSTICES.**]

This part of the English constitution was, however, so imperfectly defined, that when George III. was incapacitated for discharging the functions of royalty by becoming insane, a question arose, on which the chief constitutional and politi-

cal authorities of the time were divided in their judgment. The question was this—whether the heir apparent, being of full age, and the king's eldest son, did not become of right regent. The Whig party of the time, led by Mr. Fox, contended that he did. On the other side, it was maintained that it lay with parliament to nominate the person who should be regent. No regent was at that time appointed, because the king recovered. When the king was a second time incapacitated, all parties agreed in conferring the title and office of regent on the Prince of Wales, then heir apparent. But it was done by parliament, who laid certain restrictions upon him during the first year; but in the event (which event did happen) of the continued incapacity of the king, he was to enter into the full possession of all the powers of king, as if the king were dead; using, however, only the name of regent, not king.

The time when the Prince of Wales held the office of regent is the period of English history which will be meant hereafter by the expression "the regency," just as "the regency" in reference to French history denotes the time of the minority of Louis the Fifteenth, when the Duke of Orleans was regent. It was during the English regency that the power of Napoleon was broken, and peace was restored to Europe.

**REGIMENT**, a body of troops, whether infantry or cavalry, forming the second subdivision of an army. The union of two or more regiments or battalions constitutes a brigade, and two or more brigades make up a grand division, or corps d'armée. A regiment is commanded by a colonel, a lieutenant-colonel, and a major, whose several ranks are graduated so as to correspond to those of the general officers who command the army or division; and when a regiment is divided into two or more battalions, each of these has, at least when complete, its own lieutenant-colonel and major.

**REGISTER, REGISTRATION, REGISTRY.** The mere possession of land is not sufficient evidence of the title to it, except in those cases where it can be shown that it has been held by a party



who sells adversely for such a period as to preclude under the operation of the Statute of Limitations all claims from any other party. In tracing the title to land, a purchaser or mortgagee requires to have the right established by the production of the instruments under which the title to it is derived; and the usual period during which such title is required to be shown is the last sixty years. Now except in what are termed register counties, a purchaser or mortgagee has no means of ascertaining that some of the deeds purporting to show the title may not be purposely or accidentally withheld: for instance, A. B. may have acquired a title under a deed of conveyance, or under a will, but may have mortgaged or otherwise charged the estate, with an agreement that he should remain in possession till default of payment, and may conceal the instrument which effects this charge; and the purchaser, notwithstanding he had no notice of such charge, may after payment of the purchase-money lose his estate by reason of a charge prior to his right in point of time. And he has no absolute means of guarding himself against this risk. If, however, there were a law which compelled the registry of all instruments relating to the title in lands, and protected purchasers from the operation of all such as were not registered, this evil would be removed; and with due care in searching such registry a purchaser would be certain that he was duly protected against all adverse claims, and that his title was secure.

The Real Property Commissioners have devoted their Second Report to the subject of a general register of deeds, and they unanimously recommend the establishment of a General Public Register for England and Wales of all deeds or instruments affecting land, in order to secure titles against the loss or destruction, or the fraudulent suppression or accidental non-production of instruments; to simplify titles by rendering in most cases needless the assignment of out-standing terms; to protect them from the consequences of constructive notice; and to render conveyances shorter and more simple.

To a certain extent such registers

have been already established in England. By the 27 Henry VIII. c. 16, it is enacted that all bargains and sales of land shall be enrolled. The 2 & 3 Anne, c. 4 (amended by 5 Anne, c. 18) directs that a memorial of all deeds, conveyances, and wills concerning any lands in the West Riding of Yorkshire may, at the election of the parties, be registered; and that any conveyance or will affecting the same lands shall be deemed void against a subsequent conveyance unless a memorial shall be registered. The 6 Anne, c. 35, recites that "lands in the East Riding of York, and in the town and county of the town of Kingston-upon-Hull, are generally freehold, which may be so secretly transferred or conveyed from one person to another, that such as are ill-disposed have it in their power to commit frauds, and frequently do so, by means whereof several persons (who, through many years' industry in their trades and employments, and by great frugality, have been enabled to purchase lands, or to lend moneys on land security) have been undone in their purchases and mortgages by prior and secret conveyances and fraudulent incumbrances; and not only themselves, but their whole families thereby utterly ruined:" and then the Act establishes a register of the memorials of deeds and wills in the East Riding of Yorkshire. The 7 Anne, c. 20, establishes such a register for Middlesex; and the 8 George II. c. 6, establishes one for the North Riding of Yorkshire, and provides that deeds, wills, and judgments affecting land may be registered at length, instead of the registration of mere memorials of them. In the Bedford Level there is a registration of all deeds affecting land there. These registers, owing to the insufficiency of their indexes, and to some other defects, do not answer all the purposes which might be expected from them, and in many respects the arrangements respecting them are cumbrous and expensive: nevertheless (as the Commissioners remark) no one has proposed to abolish them. A registration of wills of personalty has long been established in the ecclesiastical courts. The Act for Abolishing Fines and Recoveries

(3 & 4 Wm. IV. c. 74) substitutes for them a deed which is enrolled in the Court of Chancery. In Ireland, Scotland, in the Colonies, in most of the United States, in Sweden, France, and Italy, and in many of the German States, registers are established. Nor is it found that the disclosures which a register makes of the state of landholders' property produce inconvenience, nor are such disclosures inseparable from all systems of registration. It is obviously for the public benefit that the apparent extent of a person's landed property should not induce men to give him a credit to which the actual amount of that property does not entitle him.

The commissioners propose to register every document transferring any estate in land or creating a charge upon it, except such as relate to copyholds, and leases for not more than twenty-one years, accompanied by possession. Thus contracts concerning land (with certain limitations), liens upon it, judgments, crown debts, decrees in equity, pending suits, and appeals, should all form matters of registration. They recommend that all deeds should be registered at length; indeed, that the original deeds should be deposited at the Registry, and that (unless in special circumstances) office-copies of them shall be admitted as evidence. They propose that the register should not be classified according to the names of individuals, but that to the registered deed relating to an estate a symbol shall be attached indicative of that estate, under which symbol all subsequent documents affecting it will be entered. The system admits of opening a fresh series of entries, or, in other words, commencing a new title for any portion of the estate which may be separately conveyed, references being made from each to the other. And thus again many separate estates might be united under one symbol. Indexes should be prepared both of the symbols and of persons: and to facilitate reference, England and Wales should be divided into districts, usually corresponding in limits with the counties. Separate indexes should be made to wills, judgments, &c.

It is the opinion of the commissioners that if a register is established, it ought to be taken as sufficient notice of the docu-

ments registered; and that, on the other hand, default of registration ought not to be remedied by any proof even of actual notice. With this view they recommend that persons should have liberty to register contracts, to enter caveats during the interval between the execution of the deed and its registration, and inhibitions which shall prevent owners of estates who enter them from dealing with the estates pending such inhibition. A bill founded on this report was brought into Parliament (1846), but after a report by a Committee of the House of Commons, it was dropped.

The Act 1 & 2 Victoria, c. 110 (abolishing arrest on mesne process, except in certain cases) provides (§ 19) that no judgment of the superior courts or decree of the courts of equity shall affect lands unless a memorandum of such judgment, &c., shall be registered with the senior master of the Court of Common Pleas, who shall enter it under the name of the person whose estate is to be affected by it. The 2 & 3 Vict. c. 11, enacts that these registered judgments shall not be valid for a longer space than five years, but it provides that the entry of them may be renewed; it also enacts that no pending suit (*lis pendens*) shall affect the purchaser or mortgagee with notice, unless a similar memorandum is registered by the same officer, under the head of the person whose estate is affected by it, and the entry must be renewed every five years; and, thirdly, the Act requires crown debtors to be registered in the same office, and provides means for obtaining and recording their discharge from their liabilities to the crown; but the Act does not require the renewal every five years of the entry in this case.

(*Second Report of Real Property Commissioners; and the Works therein cited; Tyrrell's Suggestions for the Laws of Real Property.*)

REGISTRATION. The registration of documents in Scotland is a great and important system intimately connected with the titles of real or heritable property, and with the execution of the law. It is thus divided into two distinct departments which may be considered sepa-

rately—Registration for Preservation, and Registration for Execution.

Registration for Preservation, in its simplest form, is merely the preserving of an attested transcript of any deed in a public register, that thus an authentic copy may be had recourse to in case the original should be lost. Besides the regular statutory records of particular deeds, there are books attached to the several courts of civil jurisdiction, in which parties may for their own convenience register such documents as do not require by any special obligatory law to be recorded. It is a general rule that extracts from any such records may stand in the place of the originals when these are not forthcoming, but that a party is not to found on an extract if he have the original deed in his possession and can produce it. In the case of *sasines*, however, and other deeds, of which, as will be seen below, it is not the deed itself, but its registration, that makes the completed title, an extract from the register is the proper document to be produced. There is a certain class of actions, however, to meet which the original must be produced if it be accessible. These are called Actions of Reduction-Improbation. Such an action is raised against the party favoured by the deed, by some other party, and its object is the annulling the deed on some legal ground. As a matter of form, in commencing such an action, the pursuer states, along with whatever other grounds of objection he may have, that the deed is forged, and he desires the original to be produced, that it may be judicially examined. The rule for production of the original is subject to modifications, where the ground of the action is extrinsic of anything peculiar to the original document; and if the original be lost without being intentionally destroyed, the inquiry must proceed on the extract and the other circumstances that can be adduced. It is usual to speak of registration for preservation, as being also for publication; and in this sense, when a deed is of such a character that to make it effectual in the grantee's favour it must have been delivered to him by the grantor, such registration is

in the general case equivalent to the delivery. It will operate in this respect in adjusting questions of competing right, as where a father makes over to one child the property that, in case of his dying intestate, would go to another, and registers the deed. It is questioned, however, if the mere registration would be in all cases that complete transference of property which is necessary to bar the claims of creditors under the statutes against alienations to their prejudice by insolvents. The registration of ordinary documents for preservation was sanctioned by the Act 1698, c. 4, which generally extends to registration "in any authentic public register that is competent." Besides the central register attached to the supreme court, there are others connected with the Sheriff and Corporation Courts, but it does not appear to be distinctly settled what may be, with reference to various descriptions of documents in each case, a "competent" register.

By far the most remarkable of the registers for preservation, is that of the "*Sasines and Reversions*," the former word expressing the Act by which an estate is created or transferred in heritable (*i. e.* real) property, the latter the attestation of the extinction of a burden, *i. e.* of the devolution of a temporary estate on the person entitled to the remainder. This system has been gradually formed. In its present state its main operative principle is, that when a title to land appears on the register, no latent title derived from the same authority can compete with it, and that registered titles rank according to their priority, so that if A first sell his property to B and execute the proper conveyance, and subsequently sell the same property to C, if C get his title first recorded it cannot be questioned by B, who has only his pecuniary recourse against A. In pursuance of this system, in transactions regarding land, the public records are relied on as affording the means of ascertaining the character and title, and after they have searched for the period of prescription, or examined over a period of forty years, [PRESCRIPTION] parties can trust that there are no latent rights, and may safely deal with the person who professes

to dispose of any right connected with it. The origin of this system may be traced back to the commencement of the sixteenth century, when the notaries were required to record their proceedings in their protocols, and the other officers connected with the feudal transference of land were bound to make returns of their official acts. In 1599 an Act was passed in which an effort was made to produce regularity in these registers, by penalties. It was by the Act 1617, c. 16, that the system was founded on its right principle. The preamble of that statute bears "considering the great hurt sustained by his Majesty's lieges by the fraudulent dealing of parties who having annallied [alienated] their lands, and received great summes of money therefore, yet by their unjust concealing of some private right formerly made by them, render the subsequent alienation done for great summes of money altogether unprofitable; which cannot be avoided unless the said private rights be made public and patent to her Majesty's lieges." The Act then appoints the sasines, reversions, &c., to be registered within three-score days after execution, otherwise they are "to make no faith in judgment, by way of action or exception, in prejudice of a third party, who hath acquired a perfect and lawful right to the said lands and heritages: Bot prejudice alwayes to them to use the said writs against the party maker thereof, his heirs, and successors." By the other clauses of the Act the superintendence of the system is given to the Clerk-Register, and the country is divided into Registration Districts. There is one defective provision in this Act, which is still in force. Parties are allowed to register their titles either in the particular register of their district or in the general register at Edinburgh. It is unusual to adopt the latter alternative, and when it is followed, it is generally for the purpose of concealing instead of publishing the transaction. There was another material defect in the old Act. A person might have his title immediately registered, but was liable to have it superseded by any other person able to register a title on a warrant previously obtained. This was remedied by the Act

1693, c. 13, which gave the registerable titles priority not according to the date of their execution, but to that of their registration. To prevent injustice by the accumulation of unregistered deeds at the office, a minute-book was, by a contemporary Act, appointed to be kept, in which the keeper enters an outline of each document as it is presented to him. By the present practice, when a sasine or other writing belonging to this register is presented to the keeper, he marks in the minute-book the day and hour of presentation. This is indorsed on the deed itself, and marks the date of registration. When the deed is engrossed at length in the register, a certificate to that effect is indorsed on the deed, mentioning the pages of the register in which it is to be found, and the deed is then returned. Registration volumes, with minute-books accompanying them, are from time to time issued from the General Register-house to the district registrars, so systematically marked and certified, as to prevent them from being tampered with without either interpolation or mutilation being easily perceptible. When a volume is finished, it is returned with the corresponding minute-book to the General Register-house, the keeper of the District Register retaining a copy of the minute-book for general reference. The real titles of all the heritable property in Scotland are thus preserved in a seriatim and indexed collection, in the General Register-house at Edinburgh. When property is offered for sale or mortgage, a "search" generally forms part of the titles offered for inspection to the parties treating for it. This is a certificate by the proper officer, describing all registered documents regarding that particular piece of land which have been recorded during forty years. The documents that require to be registered have lately been much simplified and abbreviated by the act 8 & 9 Vict. c. 35. It has to be kept in view that the execution of the real title which may be registered within the sixty days only gives a *preferable* title. It is not necessary to create a title, and if the receiver of a conveyance have an absolute reliance on

the integrity of the granter and all from whom that person may have derived his title he may defer completing and recording it, and may encounter the risk of some other person obtaining a title and getting on the register before him. The simplification of the documents to be registered tends to lessen the temptation to delay their completion and registration. It is remarkable that the enlightened mind of Cromwell appears to have comprehended the utility of this system, and that he made an effort to introduce it into England. We are told by Ludlow (*Memoirs* I. p. 436), "In the meantime the reformation of the law went on but slowly, it being the interest of the lawyers to preserve the lives, liberties, and estates of the whole nation in their own hands, so that upon the debate of registering deeds in each county, for want of which within a certain time fixed after the sales, such sales should be void, and being so registered that land should not be subject to any incumbrance, this word incumbrance was so managed by the lawyers, that it took up three months' time before it could be ascertained by the committee."

Registration for Execution is another peculiarity of the law of Scotland, although the system of warrants to confess judgment in England in some measure resembles it. The party to a solemn deed incorporates with it a clause of registration, by which, on the deed being registered in the books of a court competent to put the deed in force, the decision of the court shall be held as pronounced in terms of the deed, and execution may proceed against the party on an extract, as if it were the decree of a court. The engagement on which such execution may issue must be very distinctly set forth. Thus, if it be for payment of money, it must be for a sum named in the deed, and not for the balance that may be due on an account arising out of the transactions to which the deed refers. This method of execution was by statute (1681, c. 20) made applicable to bills and promissory notes without their containing any clause of registration. To entitle it to this privilege, the bill or note must be ap-

parently without flaw, must bear the appearance of due negotiation, and must have been protested. The operation of this system was much widened by the Act 1 & 2 Vict. c. 114, which extended registration for execution to the Sheriff Courts.

**REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.** Parish registers were not kept in England till after the dissolution of the monasteries. The 12th article of the injunctions issued by Cromwell, Henry the Eighth's secretary, in 1538, directs that every clergyman shall, for every church, keep a book wherein he shall register weekly every marriage, christening, and death, any neglect being made penal. This measure was surmised to be preliminary to a new levy of taxes, and therefore caused much alarm. In the first year of the reign of Edward VI. (1547) ecclesiastical visitors were sent through the different dioceses in order to enforce various injunctions, and, among others, that of Cromwell with respect to parish registers. In the beginning of Elizabeth's reign this injunction was repeated, when the clergy were required to make a protestation in which, among other things, they promised to keep the register-book in a proper and regular manner. In 1694 an Act (6 & 7 Wm. III. c. 6) for a general registration of marriages, births, and deaths, was passed merely for purposes of revenue; it is entitled "An Act for granting to his Majesty certain rates and duties upon Marriages, Births, and Burials, and upon bachelors and widowers, for the term of five years, for carrying on the war against France with vigour." It is a very long Act, in which the duties are minutely set down. A supplementary Act was passed (9 Wm. III. c. 32), entitled "An Act for preventing frauds and abuses in the charging, collecting, and paying the duties upon marriages, births, burials, bachelors, and widowers. The 52 Geo. III. c. 146 (28 July, 1812), entitled "An Act for the better regulating and preserving parish and other registers of births, baptisms, marriages, and burials, in England," made some alteration in the law, chiefly with reference to having the books made of parchment or strong paper, and

to their being kept in dry and well-painted iron chests.

The Registration Act (6 & 7 Wm. IV. c. 86: 17 Aug., 1836), entitled "An Act for registering Births, Deaths, and Marriages, in England," came into operation July 1, 1837. By the 44th section of the 6 & 7 Wm. IV. c. 85, entitled "An Act for Marriages in England," the provisions of this Registration Act are extended to the Marriage Act. [MARRIAGE, p. 322.]

The most important provisions of this Registration Act are the following:—A general registry-office is to be provided in London and Westminster (§ 2). Lord Treasurer and Lords Commissioners of his Majesty's Treasury to appoint officers, and fix salaries, to be paid out of the consolidated fund (§§ 3 and 4). Regulations for conduct of officers to be framed under direction of the Secretary of State (§ 5). Annual abstract of registers to be laid before Parliament (§ 6). The guardians of the poor of a union or parish, shall on the 1st of October, 1836, if the board is established at the passing of the Act, or, if not, within three months after its establishment, divide the union or parish into districts as directed by the registrar-general, and appoint registrars and superintendent registrar, if the clerk of the guardians will not or cannot execute that office (§ 7). Register offices to be provided in each union by the guardians, and to be under the care of the superintendent registrar (§ 9). Temporary registrars and superintendent registrars to be appointed, for parishes not having guardians under the Poor-law Act, by the Poor-law Commissioners; but in case of subsequent unions, previous appointments to be vacated (§§ 10 and 11). Deputy registrars may be appointed by the registrars (§ 12). All books, &c. to be transferred on removal of registrar or superintendent, under a penalty of commitment to gaol (§ 15). Registrar and deputy to dwell in the district, and their names and additions to be put on their dwelling-houses (§ 16). Register books to be provided by the registrar-general, for making entries of all births, deaths, and marriages of his Majesty's subjects in England, according to the forms of

schedules (A, B, C) annexed to the Act (§ 17). Registrars authorised and required to inform themselves carefully of every birth and every death which shall happen within their district after the first day of March, 1837, and to learn and register as soon after the event as conveniently may be done, without fee or reward, save as hereinafter mentioned, in one of the said books, the particulars required to be registered according to the forms of the said schedules (A and B) respectively, touching every such birth or every such death not already registered (§ 18). After March 1, 1837, parents and occupiers may, within forty-two days after birth and five after death, give notice thereof to registrar; and owners and coroners must do so forthwith in cases of foundlings and exposed dead bodies (§ 19). Parents and occupiers, on being required by the registrar, within forty-two days, must give all the particulars required to be registered respecting birth (§ 20). Children born at sea must be registered by the captain (§ 21). After the expiration of forty-two days from the birth of the child, it can only be registered within six months, on the solemn declaration of the particulars before the superintendent registrar, who is to sign the entry, and to receive 2s. 6d. and registrar 5s., extra fee; and no registration, after forty-two days, shall be made otherwise than as above, under a penalty of 50*l.* (§ 22). Births not to be registered after six months, under a penalty not exceeding 50*l.*, and no registration after that date shall be evidence (§ 23). Name given in baptism may be registered within six months after registration of birth, on production of a certificate by the minister (§ 24). Some person present at death, or occupier of house, required to give particulars of death, on application by registrar, within eight days; registrar to make entry of finding of jury upon coroner's inquests (§ 25). Registry of persons dying at sea, containing particulars, to be kept by the captain (§ 26). Registrar to give certificate of death to undertaker, who shall deliver the same to the minister or officiating person, and unless such certificate is de-

livered the minister must give notice to the registrar; but the coroner may order body to buried, and give certificate thereof; and if any dead body shall be buried without certificate of registry or of inquest, and no notice given to the registrar within seven days, the party shall forfeit 10*l.* (§ 27). Every register must be signed by the informant (§ 28). Registrars to make out accounts quarterly, to be verified by the superintendent, and are to be paid by the guardians, as directed (§ 29). Marriage register books to be provided by the registrar-general for ministers (§ 30). Marriage registers to be kept in duplicate, containing the several particulars of schedule C; and every entry shall be signed by the clergyman, or the registering officer, or secretary of Quakers and Jews, and by persons married, and by two witnesses (§ 31). Certified copies of registers of births and deaths to be sent quarterly, and the register-books, when filled, to the superintendent-registrar (§ 32). Duplicates and certified copies of registers of marriages to be sent to superintendent-registrar (§ 33). Superintendent-registrars to send certified copies of registers to the general register office (§ 34). Searches may be made and certificates given by the persons keeping the registers, on payment of the fees prescribed (§ 35). Indexes to be made at the superintendent-registrar's office, searches allowed, and certified copies given (§ 36). Indexes to be kept at general register office, searches allowed, and certified copies given (§ 37). Certified copies given at general register-office to be sealed, and shall then be evidence without further proof (§ 38). Ministers, &c. may ask parties married the particulars required to be registered; and wilfully giving false information is perjury (§§ 40 and 41). Penalty for not duly registering births, deaths, and marriages, or for losing or injuring the registers, not exceeding 50*l.* Penalty for destroying or falsifying register-books, or entries therein, or giving false certificates, is felony (§ 43). Accidental errors may be corrected, within one month, in the presence of the parties (§ 44). Modes of recovering penalties and of

making appeals are provided for by §§ 45 and 46. Registers of baptism and burials may be kept as heretofore (§ 49). Registrar-general to furnish notices to guardians of unions, &c. specifying acts required to be done by parties registering, and which are to be published in conspicuous places of the unions or parishes (§ 50).

Another Act was passed (1 Vict. c. 22—June 30, 1837), entitled "An Act to explain and amend two Acts passed in the last session of Parliament, for Marriages, and for registering Births, Deaths, and Marriages, in England." This Act consists chiefly of arrangements necessary to extend and improve the provisions of the former Act, and its clauses are not of sufficient interest to the public to require any abstract to be given of them.

Previous to the Registration Act coming into operation it was necessary to divide the country into districts of convenient size for equalizing the labours of the registrars by contracting the area where the population was dense and extending it where the population was thin. The Registrar-general issued a circular letter in September, 1836, to the boards of guardians throughout the country, on whom devolved the duty of forming each poor-law union into registration districts, and as the unions differed much from each other in population, ranging from 2000 to 80,000, the registrar-general left the arrangement to the guardians, simply referring them to certain principles for their guidance. Parishes and townships not under the Poor-law Commissioners were formed into temporary districts, or, where more convenient, were annexed to a district already comprised in a poor-law union. To each district a registrar of births and deaths is appointed, and also a registrar of marriages; and in each union there is a superintendent registrar. The registrar of births and deaths is appointed by the guardians, and is always a resident in the district in which he acts. The registrar of marriages is appointed by the superintendent registrar, subject to the approval of the guardians.

The total number of registrars of births and deaths at the end of Septem-

ber, 1838, was 2193, of whom 1021 were officers in poor-law unions. At the end of December, 1838, the number of superintendent registrars was 618, of whom 56 were superintendent registrars of temporary districts; at the same period the number of registrars of marriages was 817, of whom 419 were also registrars of births and deaths. In the first year, under the new Act, there were registered in England and Wales—

Births . . . . . 399,712

Deaths . . . . . 335,956

Marriages . . . . . 111,814

Mr. Finlaison, in an estimate of the number of births, deaths, and marriages, which might require to be registered in the first year, calculated the number of births at 550,085, of deaths at 335,968, and of marriages at 114,947. The approximation as to deaths is remarkable, and not less so the deficiency in the births and in some degree in the marriages. The imperfection in the registration of births, which seems to have arisen partly from the opposition of interested persons, partly from the erroneous notions of the ignorant, and partly from mere negligence, has since been in some degree remedied, but is still imperfect.

The registrar-general, in his 6th Report, dated Aug. 10, 1844, states that four inspectors had been appointed to visit every district into which England has been divided, in order to examine into the mode in which the registrars perform their duties. These inspectors, among other important directions given to them, are required to see "that the places of birth or death are accurately recorded; that the ages and professions of those who die are duly registered; that exertions are used to impress upon persons giving information of deaths the importance of producing a certificate of cause of death, in the hand-writing of the medical men who attended the deceased in their last illness," &c.

By the end of 1839 about 350 new register-offices had been built, and the use of temporary offices had been sanctioned in many places. The ordnance-office supplied iron boxes for holding the register books of each district. By the

end of September, 1838, register books of births and deaths, and forms for certified copies thereof, had been provided by the registrar-general for 2193 registrars of births and deaths; and marriage register books, and forms for certified copies had been supplied to 11,694 clergymen of the established church, to 817 registrars of marriages, to 90 registering officers of the Society of Friends, and to 36 secretaries of Jewish synagogues. They are each required to transmit certified copies on paper having a peculiar water-mark as a safeguard against the substitution of false entries, every three months, to the superintendent registrar of each district, who transmits, once a quarter, to the registrar-general the certified copies of all the births, deaths, and marriages, which have occurred within the district during the preceding three months. These certified copies, having been deposited in the register-office in London, are there examined and arranged; and alphabetical indexes are then formed and abstracts of them are compiled. In a few years millions of entries will have been made, and yet, for legal or other purposes, it will be as easy to find out the name of any individual from among so great a number as it is to find out a word in a dictionary or a cyclopaedia.

The registration for 1839 was

Births . . . . . 480,540

Deaths . . . . . 331,007

Marriages . . . . . 121,083

The improvement in the registration of births, as compared with that for 1838, is sufficiently obvious.

The registration for 1839-40 and 1840-41 is as follows:—

	1839-40.	1840-41.
Births . . . . .	501,589	504,543
Deaths . . . . .	350,101	355,622
Marriages . . . . .	124,329	122,482

The number of births not registered still amounts to some thousands annually, and the registrar-general is of opinion that "the registration of births will not be complete until it is enacted by law that the father or mother, or some other qualified informant, shall give notice, within a fixed period, of a birth having taken place."

A parliamentary paper gives the num-



ber of marriages, births, and deaths, registered in 1839, 1840, 1841, and 1842, as follows:—

	1839.	1840.	1841.	1842.
Marriages .	123,166	122,665	122,496	118,825
Births .	492,574	502,303	512,518	517,739
Deaths .	338,979	359,634	343,847	349,519

For other details relating to registration of marriages in England, see **MARRIAGE**.

**REGISTRY OF SHIPS.** [SHIPS.]

**REGRATING.** [FORESTALLING.]

**RELEASE.** "Releases are in divers manners, viz.: releases of all the right which a man hath in lands or tenements; and releases of actions personals and reals, and other things." (Litt. § 444.)

The former kind of release may be considered as a species of conveyance, and the instrument of release must be a deed. The operative words of release are *remise, release, renounce*, and for ever *quit claim* (an abbreviation or corruption of *quietum clamasse*). According to Littleton (§ 508), a release to a man of all demands is the best release that can be made, "and shall ensure most to his advantage;" but Coke remarks that "claims" is a word of still more extensive import. The parties to a release are the releasor and the releasee: the releasor is he who quits or renounces that which he has; the releasee is he who acquires what the other gives up, but he cannot acquire anything by the release, unless he has some estate in or right to the thing which is the object of the release.

Releases are either of an estate in land or of a right to land; or they are releases of things personal. Releases of estates in or rights to land form a part of the law of the acquisition of real property.

In order that a Release of an estate in land may have its intended effect, there must be privity of estate between the releasor and releasee; that is, the estates of the releasor and releasee must have been acquired by the same conveyance or title, or the one estate must have been derived immediately out of the other. There must be this privity whenever the Release of an estate operates either by way of enlarging the estate of the re-

leasee, or by way of passing to him the estate of the releasor.

A Release, not considered as an instrument of conveyance, is the giving up or discharging of a right of action or suit which one man has against another. This release may be either by act of law or by deed.

If a creditor makes his debtor his executor or one of his executors, the debt is legally extinguished as soon as the creditor dies, though there can be no legal evidence of this extinguishment until the executor has obtained probate of the will. The ground of this legal conclusion is, the union of creditor and debtor in the person of the executor, who would be a necessary party to an action at law against himself. But in equity so far is the debtor from being released, that the debtor executor is considered to have received the debt, and to have it as assets in his hands. Accordingly in a suit in equity against him, he may be ordered to pay the amount of the debt into court, upon admitting it in his answer. If a debtor appoint his creditor his executor, the creditor executor, both at law and in equity, may retain his debt out of the assets which come to his hands, provided he does not thereby prejudice creditors of a superior degree. If a woman marries her debtor or creditor, the extinguishment of the debt is a necessary consequence.

In a Release of this kind also the proper words are *remise, release, and quit claim*; but any words are sufficient for the purpose which clearly express the intention of the parties to the deed. If a man covenants with another that he will never sue him, this is legally construed to be equivalent to a release, because the same end would be ultimately effected by virtue of this covenant, as if there were an absolute release. But there are cases in which a perpetual covenant not to sue one debtor will not discharge a co-debtor. (*Hutton v. Eyre*, 6 Taunt., 289.) A covenant not to sue for a limited time cannot of course have the effect of a release.

All persons may release, who are not under some legal disability, such as infancy. A husband may release a debt

due to his wife, because he is the person entitled to receive it; but his release of a debt due to the wife extends only to such debts as are demands at the time of the release. A partner, or other co-debtee, may also release a debt due to him and his co-partners. An executor may, at law, release a due debt to him and his co-executors as such; and one of several administrators has the same power: but such releases are ineffectual in equity, unless they are made in the due discharge of the executor's duty. Though one of several co-plaintiffs may release a cause of action, a court of law will set aside the release if it is a fraudulent transaction.

A release may be set aside in equity on the ground of the fraud, a term which will include every act of commission or omission that renders the transaction unfair, such as misrepresentation or suppression of facts important to be known to the releasor. A plea of a release is no answer to a bill in equity which seeks to set aside the release on the ground of fraud, or which, anticipating a plea of the release, charges that it was fraudulently obtained, unless the fraud which is charged is put in issue in the plea, and sufficiently denied by answer. The principle of this is fully and clearly stated by Lord Redesdale. (*Roche v. Morgell*, 2 Scho. and Lef., 730.)

A release is generally so expressed as to include all demands up to the day of the date of it; but in this case the day of the date is excluded from the computation. If the release extends to all demands up to the making of the release, this will comprehend all demands up to the delivery of it.

It is usual for releases to contain very general words, which, in their literal signification may comprehend things that the releasor does not intend to release. But whenever it can be clearly shown, as for instance by a particular recital in a deed, that the general words of release were intended to be limited, such construction must be put on them. Parol evidence is not admissible for the purpose of limiting or enlarging the words of release; but, as in the case of wills, it may be admitted where a dif-

ficulty arises in applying the words of the instrument to the facts of the case, for which purpose the state of the facts at the time of the release must be ascertained by extrinsic evidence.

RELIEF, RELEVUM, a burthen incident to feudal tenures, being a sum of money paid to the lord on the admittance of a fresh tenant. It is a relic of that state of things in which the succession was not strictly speaking of right, but at the will of the lord, who required the payment of such an acknowledgment for the concession. It became, however, so much the custom for the lords to admit the sons or near kindred (heirs, as we now say) to the inheritance of the ancestor, that a custom became established of doing so, and out of the custom grew the law of inheritance. The money, however, which had been paid for admission in the former state of things, continued to be paid when the succession of the next heir had become what is called matter of right.

Bracton gives what is probably the true etymology of the word. "Relevia," says he, "are so called, 'quia hereditas quæ jacens fuit per antecessoris decessum, relevatur in manus heredum, et propter factam relevationem.'"

REMAINDER. An estate in remainder is defined by Coke to be "a remnant of an estate in lands or tenements, expectant on a particular estate, created together with the same at one time." According to this definition, it must be an estate in lands or tenements, including incorporeal hereditaments, as rents and tithes; and it is an estate which at the time of its creation is not an estate in possession, but an estate the enjoyment of which is deferred. The estate in remainder may exist in lands or hereditaments held for an estate of inheritance or for life. It must be created at the same time with the preceding estate, and by the same instrument; but a will and a codicil are for this purpose the same instrument. A remainder may be limited by appointment, which is an execution of a power created by the instrument that creates the particular estate; for the instrument of appointment is logically considered as a part of

the original instrument. A remainder may also be created either by deed or by will; and either according to the rules of the common law, or by the operation of the Statute of Uses, which is now the more usual means.

If a man seised in fee simple grants lands to A for years or for life, and then to B and his heirs, B has the remainder in fee, which is a present interest or estate, and he has consequently a present right to the enjoyment of the lands upon the determination of A's estate; or, in other words, he has a vested estate, which is called a vested remainder. A reversion differs from a remainder in several respects. He who grants an estate or estates out of his own estate, retains as his reversion whatever he does not grant; and upon the determination of the estate or estates which he has granted, the land reverts to him. There may be several remainders and a reversion expectant on them. If A, tenant in fee simple, limits his estate to B for years, with remainder to C for life, with remainder to D in tail, this limitation does not exhaust the estate in fee simple. By the limitation B becomes tenant in possession for years, C has a vested remainder for life, D a vested remainder in tail, and A has the reversion in fee. If the limitation by A exhaust the whole estate, as it would have done in the preceding instance if the limitation had been to C and his heirs, A has no estate left. It is a necessary consequence that if a man grants all his estate, he can grant nothing more; and therefore the grant of any estate after an estate in fee simple is void as a remainder. Indeed, the word remainder implies that what is granted as such is either a part or the whole of something which still remains of the original estate.

The estate which precedes the estate in remainder or in reversion is called the *particular* estate, being a *particula* or portion of all the estate which is limited; and the particular estate may be any estate except an estate at will and an estate in fee simple. It must therefore be either an estate for years, or for life, or in tail.

Estates for years may be granted to

commence at a future time; but by the rules of the common law, no estate of freehold can be created to commence at a future time. If therefore such an estate of freehold is granted, there must be created at the same time an estate for years, which shall continue till the time fixed for the enjoyment of the estate of freehold. If a freehold remainder expectant on an estate for years is created at common law, there must be livery of seisin to the tenant for years, for it is necessary that the freehold should pass to the grantee at the time of the grant, and the livery to the tenant for years enures to give a seisin to him to whom the estate of freehold is granted.

A remainder cannot be granted so as not to take effect immediately on the determination of the particular estate. If there is any interval left between the particular estate and the remainder in their creation, the remainder is absolutely void. A grant of an estate to A, and one day after the determination thereof to B, is a void remainder.

Estates in remainder are either vested or contingent. The remainder may vest at the time of the limitation, or it may vest afterwards: in either case the remainder-man acquires an estate in the land, to the enjoyment of which he is entitled upon the determination of the preceding estate. But it may happen that a vested remainder may never become an estate in possession.

A vested remainder is an estate which, by the terms of the original limitation or conveyance, is limited or conveyed unconditionally. If a remainder is not vested, it is contingent.

A contingent remainder is defined by Fearn to be "a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate." Accordingly it is the limitation of the remainder which is conditional, and there is no remainder limited or given until the condition happens or is performed. The uncertainty of the remainder becoming an estate in possession is no part of the notion of a contingent remainder; for this kind of

uncertainty may exist, as already observed, in the case of vested remainders.

Fearne has made four classes of contingent remainders, to some one of which he considers that all kinds of contingent remainders may be reduced, but he adds that "several cases which fall literally under one or other of the two last of those four descriptions, are nevertheless ranked among vested estates." The subject of contingent remainders is fully discussed in the elaborate treatise of Fearne, on *Contingent Remainders and Executory Devises*.

RENT is defined by Mr. Ricardo to be "that portion of the produce of the earth which is paid to the landlord for the use of the indestructible powers of the soil. It is often, however (he remarks), confounded with the interest and profit of capital, and in popular language the term is applied to whatever is annually paid by a farmer to his landlord." Mr. Malthus (*Prin. of Pol. Econ.*) defines rent to be "that portion of the value of the whole produce which remains to the owner of the land, after all the outgoings belonging to its cultivation, of whatever kind, have been paid, including the profits of the capital employed, estimated according to the usual and ordinary rate of the profits of agricultural capital, at the time being."

The chapter on rent, in the 'Wealth of Nations,' though abounding in important facts, contains no distinct enunciation of the nature and causes of rent. Dr. James Anderson in the 'Recreations in Agriculture' (vol. v. p. 401), published in 1801, is acknowledged to have propounded the theory of the origin and progressive increase of rent which is now generally recognised; but his theory excited little attention at the time; and it was not until 1815 that it was more fully and elaborately treated in two works published simultaneously: one of them was an 'Essay on the Application of Capital to Land,' by a Fellow of University College, Oxford (Mr. West, a barrister, afterwards chief-justice of Bombay); the other work was by the late Mr. Malthus, and was entitled 'An Inquiry into the Nature and Progress of Rent.' The late Mr. Ricardo had adopted the principles of these two

works several years before they were published, but it was not until 1817 that a pamphlet by him appeared which contained his views on the subject. The publication of his 'Principles of Political Economy and Taxation' followed in the same year. Mr. Mill and Mr. MacCulloch have more fully adopted the Ricardo theory than any other writers; but Mr. Malthus has dissented from some of its principles, although his views in the main coincide with that theory; and Professor Tucker, of the university of Virginia, dissents from it still more widely than Mr. Malthus. Mr. Senior, while condemning some of Mr. Ricardo's reasonings, appears to have again propounded them under a different form.

The causes of the ordinary excess of the price of raw produce above the cost of production, as enumerated by Mr. Malthus, are:—1, That quality of the soil, by which it can be made to yield a greater quantity of the necessities of life than is required for the maintenance of the persons employed on the land. This is the foundation of rent, and the limit to its possible increase. 2, The second quality consists in that property peculiar to the necessities of life, by which, if properly distributed, they create demanders in proportion to the quantity of necessities produced. Thus, the effect is to give a value to the surplus of necessities, and also to create a demand for more food than can be raised on the richest lands. 3, The comparative scarcity of fertile land; a circumstance which is necessary to separate a portion of the general surplus into the specific form of rent to a landlord. As most modern economists have adopted the main principles of the Ricardo theory, we here give an outline of it, in the words of Mr. Ricardo.

Mr. Ricardo says:—"If all land had the same properties, if it were boundless in quantity and uniform in quality, no charge could be made for its use, unless where it possessed peculiar advantages of situation. It is then because land is of different qualities with respect to its productive powers, and because, in the progress of population, land of an inferior quality, or less advantageously situated, is called into cultivation, that rent is ever

paid for the use of it. When, in the progress of society, land of the second degree of fertility is taken into cultivation, rent immediately commences on that of the first quality, and the amount of that rent will depend on the difference in the quality of these two portions of land. . . . With every step in the progress of population which shall oblige a country to have recourse to land of a worse quality to enable it to raise its supply of food, rent on all the more fertile land will rise. . . . If good land existed in a quantity much more abundant than the production of food for an increasing population required, or if capital could be indefinitely employed without a diminished return on the old land, there could be no rise of rent; for rent invariably proceeds from the employment of an additional quantity of labour with a proportionally less return."

Rent, according to the definition which has been given, consists of a surplus which remains after the capital expended in production has been replaced with ordinary profits. This surplus, which constitutes rent, arises, as Mr. Ricardo asserts, from, and is in proportion to, the necessity for resorting to inferior soils or employing capital on the old soil with smaller returns. To use the words of Mr. Mill—"Rent is the difference between the return made to the more productive portions and that which is made to the least productive portion of capital employed upon the land." In a country containing, as every country does contain, land of various degrees of fertility, rent therefore will not be paid until the demands of an increasing population have rendered it necessary to have recourse to the inferior soils. "Thus (continues Ricardo), suppose land, Nos. 1, 2, 3, to yield, with an equal employment of capital and labour, a net produce of 100, 90, and 80 quarters of corn. In a new country, where there is an abundance of fertile land compared with the population, and where therefore it is only necessary to cultivate No. 1, the whole net produce will belong to the cultivator, and will be the profits of the stock which he advances. As soon as population had so far increased as to make it necessary to cultivate No. 2, from

which 90 quarters only can be obtained after supporting the labourers, rent would commence on No. 1; for either there must be two rates of profit on agriculture, or ten quarters, or the value of ten quarters, must be withdrawn from the produce of No. 1 for some other purpose. Whether the proprietor of the land or any other person cultivated No. 1, these ten quarters would equally constitute rent; for the cultivator of No. 2 would get the same result with his capital, whether he cultivated No. 1, paying ten quarters for rent, or continued to cultivate No. 2, paying no rent. In the same manner it might be shown, that when No. 3 is brought into cultivation, the rent of No. 2 must be ten quarters, or the value of ten quarters, whilst the rent of No. 1 would rise to twenty quarters. . . . It often and indeed commonly happens that before Nos. 2 and 3, or the inferior lands, are cultivated, capital can be employed more productively on those lands which are already in cultivation. . . . In such case, capital will be preferably employed on the old land, and will equally create a rent; for rent is always the difference between the produce obtained by the employment of two equal quantities of capital and labour. If with a capital of 1000*l.* a tenant obtain 100 quarters of wheat from his land, and by the employment of a second capital of 1000*l.* he obtain a further return of 85, his landlord would have the power, at the expiration of his lease, of obliging him to pay 15 quarters, or an equivalent value for additional rent; for there cannot be two rates of profit. If he is satisfied with a diminution of 15 quarters in the return for his second 1000*l.*, it is because no employment more profitable can be found for it. . . . In this case, as well as in the other, the capital last employed pays no rent. For the greater productive powers of the first 1000*l.*, 15 quarters is paid for rent; for the employment of the second 1000*l.*, no rent whatever is paid. If a third 1000*l.* be employed on the same land, with a return of 75 quarters, rent will then be paid for the second 1000*l.*, and will be equal to the difference between the produce of these two, or 10 quarters; and at the same time the rent

of the first 1000*l.* will rise from 15 to 25 quarters, whilst the last 1000*l.* will pay no rent whatever." (Ricardo's *Prin. of Pol. Econ.*, 3rd. ed.)

Another incident of rent, it is said, is this: that it does not form a part of the cost of production. Mr. MacCulloch has given the following explanation of this law in Note iii. of his edition of the "Wealth of Nations." "The price of raw produce," he remarks, "does not exceed the cost of production," including in that expression the ordinary profits of the producer's capital. "The aggregate price exceeds the aggregate cost of production; but this is because the cost of production is unequal. The price exceeds the lowest, but not the highest cost of production: and this highest cost, since it regulates the price of the whole, may be considered, without impropriety, as the cost of the whole, and the rent to be a peculiar privilege of favoured individuals."

The circumstances which precede or accompany the cultivation of inferior lands or the employment of additional capital on the old lands are stated to be—1, an increase of population; 2, the accumulation of capital; 3, a rise in the exchangeable value of raw produce. The two first cause a fall in profits and wages, and a rising market-price of raw produce is a consequence of more labour or more capital being required to produce it, or of a deficient supply previous to its being produced. In a new country, the whole produce is divided between the capitalists and the labourers, and so long as fertile land is in abundance and may be had for an almost nominal price, nobody will pay a rent to a landlord, and profits and wages are maintained at a high rate. But capital accumulates and wages decrease; and whenever agriculture has reached a state in which the returns of additional capital on the old lands are less than could be obtained from the inferior land, such inferior land will be cultivated, and if the profits of the capital employed on such inferior land were 20 per cent., while the old lands yielded 30 per cent., a rent would arise equivalent to the difference, or 10 per cent. This, as well as any subse-

quent rise of rents, is caused by more capital being ready to be laid out on the old land, but which cannot be so employed without diminished returns, and this circumstance renders it more profitable to take fresh lands into cultivation, though of an inferior degree of fertility.

One of Professor Tucker's objections to the Ricardo theory of rent is directed against the assumption that "the means of subsistence are a fixed quantity, or near it, instead of its admitting of such gradations that a labourer may be supported by one-fifth of the soil once required for subsistence;" and he points to the Western states of the American Union, where a labourer can earn, in less than ten days, as much grain as he can consume in a year, and where consequently a very high scale of diet is maintained, and he contrasts it with other countries in which the whole of the year's labour is necessary to earn subsistence for the year, although the scale of diet is comparatively low. In the Atlantic states of the Union, as compared with the Western states, the contrast is also very striking. This varying character of human subsistence, Professor Tucker contends, may be a cause of rent, without either an increase or decrease in the returns to capital. The very high rents paid in Ireland may be partly attributed to this cause. In the course of his objections to Mr. Ricardo's theory, Professor Tucker remarks:—"Land is a productive machine, which but a few possess, but whose produce none can dispense with, and for which there being more and more demanders, they must and will give more of their labour to obtain it. . . Rents, having once begun, continue to increase with the increase of population and the more frugal consumption to which it impels individuals." Mr. MacCulloch simply regards the adoption of a less costly food by the labourers as similar in its effects upon prices and rents to an improvement in agriculture. Professor Tucker's further objections against the Ricardo theory consist in its ascribing "the progressive rise of raw produce and of rents to the greater amount of labour expended on the soil

last cultivated, and not to the greater cheapness of all labour from the increase of population;" and in its maintaining that "when raw produce rises, labour also rises" (p. 156). He concludes "that neither is a resort to soils of inferior quality, to lands more distant from market, nor different outlays of capital on the same lands, necessary either to the existence of rent, or to its progressive increase; but that it is caused solely by the increase of population, together with the capacity which the same soil possesses of supporting a greater number by reason of their resorting to a more frugal mode of subsistence" (p. 121). It should be observed, that Professor Tucker admits that "successive resorts to inferior soils, or outlays of fresh capital on old lands, keep pace with the rise of raw produce, and ordinarily afford a *measure of the progress of rent*, and of its different degrees, according to diversities of fertility, culture, or distance from market, but they are not the cause of its rise" (p. 113). Indeed, whatever may be the true theory of the causes and amount of rent in any given community, it may be very easily shown that the existence of soils varying in fertility is not a necessary element to the existence of rent, while the limited amount of productive soil is a necessary element.

Advantages of position, such as a proximity to markets, may counterbalance the disadvantage of barrenness; and land of this description, which, if it were further removed, would yield no rent, will, under these circumstances, produce a higher rent than more fertile lands situated at a distance from the same market. Land in the neighbourhood of towns yields a high rent, and a still higher rent is paid for land in towns. The rent in each of these cases is regulated either by the common principle that there cannot be two rates of profit, of which the case first mentioned is an instance; or, as in the latter examples, it is determined by the limited extent of such land.

Restrictions on the importation of grain, by forcing the inferior soils into cultivation, undoubtedly tend directly to raise rents; but no possible quantity of

imported produce could have any material effect in diminishing the total rents of the country. Importation necessarily implies the existence of high prices in the importing country: it has a tendency to equalise rather than to lower prices, as, by facilitating the exchange of manufactured goods for common food, population is increased, and an increased demand arises for other products of the soil besides bread corn. This has been the case in the territory of Genoa, where the soil, though of a sterile nature and unfit for the production of corn, yields a higher rent than the fertile corn-lands in the plains not far distant; for the cost of production being low by means of the low price of imported food, land may be cultivated for various agricultural objects, and yield a rent which, if employed in the production of grain, would scarcely repay the cost of production. In a country which possesses superior manufacturing resources and capabilities, the exchange of manufactures for common food may therefore be a cause of rent without resorting to inferior soils.

Mr. Ricardo regarded the owners of land in the same light as the possessors of a monopoly, advantageous to themselves and proportionably injurious to the mass of consumers. Mr. Malthus proposed to modify this view of their advantages, and to consider them as originating only in a "partial monopoly." The former is accused of underrating the national importance of rents, and Mr. Malthus of overrating them. Under a system of free importation of the produce of the soil, it may be correct to consider the owners of land as possessed only of a "partial monopoly," but it is scarcely so when laws are passed which, except in seasons of high prices, prohibit the supply of provisions from foreign countries; and in this case the interests of the community do not coincide with that of the owners of land.

When rights of property are fully established, rents will exist, whether they accrue to the farmer-proprietor or are paid by the farmer-tenant to a landlord. That quality of land which terminates in rent, Mr. Malthus regards as a boon most important to the happiness

of mankind, and the main security against the time of the whole society being employed in procuring mere necessities. "This," he observes, "is the source of all power and enjoyment; and without which, in fact, there would be no cities, no naval and military force, no arts, no learning, none of the finer manufactures, none of the conveniences and luxuries of foreign countries, and none of that cultivated and polished society which not only elevates and dignifies individuals, but which extends its beneficial influences through the whole mass of the people."

In Mr. Malthus's 'Principles of Pol. Econ.' the subject of section 7, chap. iii., is "On the causes which may mislead the landlord in letting his lands, to the injury both of himself and the country." Most of the considerations which he urges are of a practical nature, and relate to rent in agriculture. On this part of the subject the reader may refer to Grainger and Kennedy, "On the Tenancy of Land in Great Britain."

(Ricardo, Malthus, Mill, and MacCulloch's *Treatises on the Elements and Principles of Political Economy*; Professor Tucker's *Laws of Wages, Profits, and Rent investigated*, Philadelphia, 1837; Professor Jones's *Essay on the Distribution of Wealth and on the Sources of Taxation*.)

RENT (in Law Latin, *redditus*, "a return") is a right to the periodical receipt of money or something valuable in respect of lands or tenements held by him from whom the rent is due. There are three kinds of rent—rent-service, rent-charge, and rent-seek.

There is rent-service when a tenant holds lands of his lord by fealty and certain rent, or by homage, fealty, and certain rent, or by other services and certain rent. Rent-service therefore implies tenure, and it may be due to the lord of the manor of which the lands are held, or to some other chief (that is, immediate) lord of the fee, or to the reversioner. The right of distress is an incident to rent-service in arrear, so long as it is due to the same person to whom fealty is due. In order that rent-service may now be created, the person to whom the rent is reserved must have a reversion in the

lands and tenements out of which the rent is to issue; but any reversion is sufficient. Thus a person who has a term of twenty years may grant it to another, all but one day, and this will leave him a reversion, so that a rent-service may be reserved, with its incidents of fealty and the right of distress. If he assign all his term, reserving a rent, but without a clause of distress in the assignment, he cannot distrain for the rent.

Rent-service therefore which has been created since the statute of Quia Emptores can only be reserved to the lessor who retains a reversion, and it will belong to the person who is entitled to the reversion. If a man seised in fee simple makes a lease of lands for years, reserving rent, the rent-service is descendible to his heir with the reversion; though all rents which accrue due to the lessor before his death will belong to his personal representatives. A rent-service reserved out of chattels real will of course belong to the personal representatives of the lessor. A rent is now most commonly reserved in leases for years, but it may be reserved on any conveyance which passes or enlarges an estate; and it may be reserved in the grant of an estate in remainder or reversion, or in a grant of a lease for years to commence at a future time.

A rent-service may be separated from the reversion or seignory, by the reversioner granting the rent and retaining the fealty: in this case the lands are still held of the grantor, but the rent is due to the grantee; not however as rent-service, but as rent-seek (*redditus seicus*), so called, "for that no distress is incident to it." (Litt. 218.) If the seignory or reversion is granted, the rent-service will pass by the grant, and the grantee is entitled to receive the rent from the tenant from the time that he gives him notice of the grant, together with all rent that had accrued due since the grant, and is unpaid at the time of such notice.

Rent-service can only be reserved to the feoffor, donor, or lessor, or to their heirs, upon any feoffment, gift, or lease: and if rent is reserved generally, without specifying the persons, it will belong to the lessor, and after his death to those who are entitled to the reversion. Rent



is payable at the times mentioned in the reservation, but not till the last minute of the day on which it is payable.

When rent-service is in arrear, the common-law remedy for the recovery of it is by distress. [DISTRESS.] By 4 Geo. II. c. 28, § 2, every landlord who by the terms of his lease has a right of re-entry in case of non-payment of rent, may, when half a year's rent is due, and there is no sufficient distress on the premises, serve a declaration in ejectment on his tenant, without any formal re-entry or previous demand of rent, and a recovery in such ejectment is final and conclusive, unless the rent and all costs are paid within six calendar months after the judgment in the action of ejectment has been executed. The action may also be stayed before trial, if the tenant will pay or tender to the lessor, or pay into court all the rent then in arrear, together with the costs. By the common law the lessor has also an action of debt for rent against a lessee for years or at will; and by the statute of Anne (8, c. 14, § 4) there is also the same action against a lessee for life during the continuance of his estate, which had previously been given for arrears of rent after the determination of the estate (32 Hen. VIII. c. 37). A lessor may also have an action of covenant for rent, either by force of the implication contained in such words as "yielding and paying" rent, or by force of an express covenant to pay, which is seldom omitted in any lease. If the lessee assign his interest in the term, he, and his executors so far as they have assets, are still liable under the covenants to the person entitled to the reversion. The assignee also becomes bound by such of the covenants as run with the land, and is consequently liable to an action upon them. There is also the remedy by action of assumpsit or debt for the use and occupation of land, which action lies without any express agreement for rent.\*

Rent-service may be discharged in various ways. If the tenant be evicted from the lands demised to him, he is discharged from payment of the rent; and if the lessor purchase the lessee's interest,

the rent is also discharged. The lessor may release a part of the rent-service, without releasing the whole.

A rent-charge is a rent granted out of land either at common law or by the Statutes of Uses, with a power of distress for the recovery of the rent. Such rents may be created by the owner of the land who retains the property of it; and they may also be reserved on the alienation of the land. These rents differ from rent-service in not being connected with tenure, and the remedy by distress is therefore not an incident to rent-charges, but is created by the same instrument which creates the rent-charge. If no power of distress is given, the rent is a rent-*seek*. Rent-charge may be created either by deed or by will. Sometimes, by the terms of the grant, the grantee of a rent-charge is empowered to enter on the land and satisfy himself for all arrears out of the profits of the land. When a rent-charge is created under the Statute of Uses (§ 4, 5) with a power of distress and entry upon the land in case of arrear, the person to whom the rent-charge is given obtains the legal estate in the rent-charge, with all the remedies for its recovery, as he would by a direct grant of the rent-charge; and the same instrument (lease and release) which creates the rent-charge may also make a settlement of the lands charged with the rent. In this way in a marriage-settlement a rent-charge may be provided for the wife's jointure.

An estate in a rent-charge may be either in fee simple, in fee tail, for lives, or for years, according to the terms of the original limitation. A rent-charge of inheritance is real estate, and descendible to the heir; but a payment that is due belongs to the person representative.

A rent-*seek*, as already mentioned, is not, like rent-service, accompanied with a right to distrain at common law; but by the stat. 4 Geo. II. c. 28. § 5, this distinction in respect of remedy between rent-service and rent-*seek*, created since that statute, is abolished; and the act also applies to rent-*seek* created prior to the statute which had been duly paid for three years out of the last twenty years. Other rents, though they belong to one of

\* See a remark on this action, 6 A. and E., p. 839.

the three divisions above mentioned, are often distinguished by particular names: thus the real rent due from a freeholder is called a chief rent (*redditus capitalis*); the rents of freeholders and antient copyholders of manors are sometimes called rents of assise, being *assisi*, or ascertained, and also quit rents (*quieti redditus*), because they are a quittance and discharge of all services.

A fee-farm rent is properly a perpetual rent-service reserved by the crown, or, before the statute of *Quia Emptores* [FEUDAL SYSTEM], by a subject, upon a grant in fee simple. The purchaser of fee-farm rents originally reserved to the crown, but sold under 22 Car. II. c. 6, has the same power of distress that the king had, and so may distrain on other land of the tenant not subject to the rent.

REPORTS (in Law) are relations of the proceedings of courts of law and equity. They contain a statement of the pleadings, the facts, the arguments of counsel, and the judgment of the court in each case reported. The object of them is to establish the law, and prevent conflicting decisions, by preserving and publishing the judgment of the court, and the grounds upon which it decided the question of law arising in the case.

The earliest reports extant are the 'Year-books.' It is said that some few exist in MS. of the reign of Edward I., and a few broken notes are to be found in Fitzherbert's Abridgment. A series of these commences, and are now printed, from the reign of Edward II. They were published annually, which explains their name, from the notes of persons, four in number, according to Lord Coke, who were paid a stipend by the crown for the purpose of committing to writing the proceedings of the courts. These early accounts of cases are very short, abrupt, and often confused, especially from the circumstance that it is frequently difficult to ascertain whether a judge or a counsel is speaking. At that time judges were dismissed at the pleasure of the crown, and after their dismissal returned to their previous position of counsel.

The Year-books continue, with occasional interruptions in their series, down to the reign of Henry VIII. The omis-

sion during the time of Richard II. has been attempted to be supplied by Bellewe, who collected and arranged the cases of that period which had been preserved by other writers. The Year-books are wholly written in Norman-French, although by 36 Edw. III. stat. 1, c. 15, it was enacted that all pleadings should be in the English language, and the entries on the rolls in Latin. The Norman-French continued to be used by some reporters even as late as the eighteenth century. The last which appeared in that tongue were those of Levinz and Lutwyche: the former in 1702; the latter, in French and Latin, in 1704. The Year-books of later date have more continuity of style and fulness of discussion: cases are cited, and the decision of the court is given at greater length. About the end of the reign of Henry VII. it is probable that the stipend was withdrawn. Only five Year-books exist for the ensuing reign, and none were published after it. Lord Coke observes, that there is no small difference between the cases reported in the reign of Henry VIII. and those previous. Their place was shortly afterwards supplied by reports compiled and published by private individuals on their own responsibility, but subject for some time to the inspection and approbation of the judges, whose testimony to the ability and fitness of the reporter is often prefixed to the Reports. This however soon became a mere form, as appears by the statement of Lord-Keeper North, who speaks slightly of the Reports in his time as compared with his favourite Year-books.

During the reign of Henry VIII. and his three successors, Dyer, afterwards chief-justice of the Common Pleas, took notes as a reporter. Benloe and Dalison were also reporters in these reigns. In the time of Elizabeth many eminent lawyers reported the proceedings of the courts, and from the ability with which they acquitted themselves, added to the previously unsettled state of the law, the Reports of about this period have acquired very great authority. Anderson, Moore, Leonard, Owen, Coke, and Croke all lived about this time. But the first printed accounts of cases published by a private hand are those of Edmund Plowden, the

first part of which appeared in the year 1571, under the title of 'Commentaries.' A few years afterwards the executors of Dyer published the notes of their testator under the express name of 'Reports,' being the first published under that title. These were followed, in 1601 and 1602, by those of Sir Edward Coke, which, from their excellence, have ever been dignified by the name of 'The Reports.' During this time reporters did not, as they have done in more modern times, confine themselves to one court. In the same volume are found reports of cases in chancery, in the three superior courts, the court of wards, &c. During the reign of James I., Lord Bacon and Sir Julius Cæsar suggested to the king the appointment of two officers for the purpose of taking notes and minutes of proceedings in the courts. James acceded to the suggestion, and a copy of his ordinance for their appointment, at a salary of 100*l.* each, is still extant. (Rymer's *Fœdera*. 15 Jac. I. 1617.) The ordinance does not however appear to have been acted upon, and Reports continued to be compiled and published by private hands only.

The English language was first used by reporters about the time of Elizabeth. Lord Coke employed it in his 'Commentary upon Littleton.' In his preface he states why he thought it convenient to do so; and adds that his conduct was not without precedent. From the period of Elizabeth down to the present, reports have been published of the proceedings in all the courts. The whole body of Reports is now very large. Every court has its reporters, who are not persons authorized by the courts. The reporters use their own judgment as to what they shall report, and their volumes often contain trifling matters and are swelled out to a most unreasonableness and useless bulk.

A good record of cases decided, with a brief statement of the cases and the grounds of the decision, is certainly both useful and necessary; but the great mass of reported cases and the trifling matter of many of them have had the effect of making lawyers rely more on the judgments in particular cases than on those general principles of law which have an

extensive application and are the surest foundation for a sound legal opinion.

(Coke's *Reports*, Preface to Part 3; Dugdale's *Origines Juridicales*; Reeves's *History of the English Law*.)

REPRESENTATIVES. [COMMONS, HOUSE OF; PARLIAMENT.]

REPRIEVE (from the French *repris*, withdrawn) means the withdrawal of a prisoner from the execution and proceeding of the law for a certain time. Every court which has power to award execution, has also power, either before or after judgment, to grant a reprieve. The consequence of a reprieve is, that the delivery or the execution of the sentence of the court is suspended. A reprieve may proceed from the mere pleasure of the crown expressed to the court, or from the discretion of the court itself. The justices of gaol delivery may either grant or take off a reprieve, although their session be finished, and their commission expired. A reprieve which proceeds from the discretion of the court is usually granted when, from any circumstance, doubt exists as to the propriety of carrying a sentence into execution. This doubt may be created either from the unsatisfactory character of the verdict, the suspicious nature of the evidence, the insufficiency of the indictment, or from the appearance of circumstances favourable to the prisoner. When a reprieve has been granted with a view to recommend to mercy a prisoner capitally condemned, a memorial to that effect is forwarded to the secretary of state, who recommends the prisoner to the mercy of the crown, and to a pardon, on condition of transportation or some lighter punishment. [PARDON.] Where it has been granted by reason of some doubts in point of law as to the propriety of the conviction, the execution of the sentence is suspended until the opinion of the judges has been taken upon it. The sentence is then executed or commuted in accordance with their opinion.

There are two cases in which a reprieve is always granted. One is where a woman who has been capitally convicted pleads her pregnancy in delay of execution. [LAW, CRIMINAL, p. 228.] The other is where a prisoner appears

o have become insane between judgment and the award of execution. In such case a jury must be sworn to inquire whether he really is insane. If they find that he is, a reprieve must be granted. (*Termes de la Ley*, 498; Hale, *P. C.*; 2 Hawk. *P. C.* book ii. c. 51, § 8, 9; 4 Blackstone, *Com.*)

A reprieve is granted thus:—Before leaving an assize town, a calendar containing the names, offences, and sentences of the prisoners is prepared by the clerk of the assize, and is signed by the judge. If he thinks proper to reprieve any one of them, he writes the word “reprieved” in the margin of the calendar, opposite to the name of the prisoner, as follows:—

“Reprieved.	A. B. for	To be	
	the murder		hanged.”
	of C. D.		

If he leaves A. B. for execution, and subsequently reprieves him, he writes to the under-sheriff and the gaoler to say so, and such letter from the judge stays execution.

If the reprieve is sent by the secretary of state, it is under the sign manual of the king.

REPUBLIC is derived immediately from the French *république*, and ultimately from the Latin *res publica*. The Latin expression *res publica* is defined, by Facciolati, to be “*res communis et publica civium una viventium*,” and corresponds very closely with the English word *commonwealth*, as used in its largest acceptation for a political society. The Latin word *res publica* might be applied to a community under a substantially monarchical government; thus Augustus is said, in a passage of Capito, a Roman lawyer, to have governed the *res publica* (Gellius, xiii. 12); the word, however, was more applicable to a society having a popular government than to a society having a monarchical government; thus Cicero denies that the name of *res publica* can be properly given to a community which is grievously oppressed by the rule of a single man: “*Ergo illam rem populi, id est rem publicam, quis dicet tum, quum crudelitate unius oppressi essent universi; neque esset unum vinclum juris, nec consensus ac societas coetus,*

*quod est populus.*” (*De Rep.*, iii. 31.)

So Haemon, in the ‘*Antigone*’ of Sophocles (v. 733), says that a state which is under the power of one man does not deserve the name of a state.

A *republic*, according to the modern usage of the word, signifies a political community which is not under monarchical government, or, in other words, a political community in which one person does not possess the entire sovereign power. Dr. Johnson, in his dictionary, defines a republic to be “a state in which the power is lodged in more than one.” Since a republic is a political community in which several persons share the sovereign power, it comprehends the two classes of aristocracies and democracies, the differences between which are explained under ARISTOCRACY and DEMOCRACY.

The word *republic* is sometimes understood to be equivalent to *democracy*, and the word *republican* is considered as equivalent to *democrat*; but this restricted sense of the words appears to be inaccurate; for aristocratic communities, such as Sparta, Rome in early times, and Venice, have always been called republics.

It has been shown in MONARCHY that the governments usually styled “limited monarchies” are properly aristocracies presided over by a king; and consequently ought to be referred to the class of republics, and not to that of monarchies, in which they are commonly placed. We observe, however, that the German writers, who know from their personal experience the character of monarchies strictly so called, sometimes correctly give the name of republican to the government of England since 1688, and to the government of France since 1815.

A vast deal of error and confusion of thought (leading to important practical consequences) has arisen from the capricious and indistinct usage of the words *monarchy* and *republic*.

REQUEST, COURTS OF (sometimes called *Courts of Conscience*), are local tribunals, founded by Act of Parliament to facilitate the recovery of small debts from any inhabitant or trader in the district defined by the Act.

Although Courts of Requests have been superseded (see COUNTRY COURTS), it may be useful to sketch their constitution, and the facilities they afforded for the recovery of small debts.

A board of commissioners is appointed, often in corporate towns consisting of one or two aldermen, with a certain number of householders as assessors. To this board is given the power of summoning a debtor, upon the complaint of the creditor, of taking the evidence of the creditor and his witnesses upon oath, of determining on the amount due, and issuing a summons or order to the debtor to pay that amount, either in one sum or by instalments. The board has usually the power of distress on goods, or of imprisonment during a limited time, if the order for payment is not obeyed. In London the jurisdiction is confined to cases where both parties are inhabitants, and the same restriction may be found in some of the older Acts; but usually it is sufficient that the debtor should be an inhabitant, or should be "seeking his livelihood" within the jurisdiction.

The sum to which the jurisdiction of these courts extends is usually 5*l.*, often only 2*l.*, and the debt may arise either upon simple contract, a balance of accounts, or as a compromise of a larger debt; but there is usually a proviso in the Acts that a larger debt shall not be split into fragments to bring it within the jurisdiction of the court, although the creditor may reduce a larger demand to such a sum as the court can award, provided he is satisfied with the smaller amount in discharge of his whole debt.

The Acts usually provide that if a party within the jurisdiction is sued in one of the superior courts, and the plaintiff recovers from him only the sum which the local court could have awarded, the plaintiff shall pay full costs to the defendant. The Acts also reserve to a landlord the right to distrain for rent, and also prohibit the courts from interfering in matters touching the right to land or the occupation of it, or in matters belonging to ecclesiastical courts, or to tithes: usually, too, gambling debts are excluded, and sometimes tavern debts incurred on Sunday. The courts have jurisdiction

over persons under age, and can usually grant summons for wages due to minors. Attorneys are not exempted from the jurisdiction of the court, but they are usually prohibited from practising in it, and they are not liable to payment of costs for suing in superior courts. Most of the Acts contain a clause prohibiting the removal of the proceedings to superior courts.

The 8 & 9 Vict. c. 127, § 9, enables her majesty, with the advice of her privy council, among other things to extend the jurisdiction of any court of requests to 20*l.*, if such court has a judge who is either a barrister at law, or special pleader, or an attorney of one of the superior courts of common law at Westminster, who shall have practised as an attorney for at least ten years. The same section makes provision for the appointment of such a judge.

The first Act for the establishing of a court of requests is the 1 James I. c. 15, which confirms the court which had already been established in London by an act of the common council, at least as early as the reign of Henry VIII., if indeed it had not been established by antient usage. (Tidd Pratt's 'Abstract of the Acts of Parliament relating to Courts of Requests,' for a list of the places which have such courts.)

#### RESIDENCE. [BENEFICE.]

**RESIGNATION.** The word Resignation literally signifies an unsealing or breaking of a seal in order to open a testamentary instrument, as in Horace, *Lib. i. Ep. vii. 8*:

*"Officiosaque sedulitas et opella forensis  
Adducit febres, et testamenta resignat."*

The English word Resignation is the proper term to express the giving up of a benefice which the canonists call Renunciation. A surrender is the giving up of temporal land into the hands of the lord. A resignation of a benefice must be made to a superior: a parson must resign to his bishop, a bishop to the archbishop, and an archbishop to the king. A donative is to be resigned to the patron, for a donative is received immediately from the patron; but a common benefice is to be resigned to the ordinary who has admitted and instituted the clerk. **The**

subject of Resignation Bonds is discussed under BENEFICE, p. 350.

The resignation must be in writing, and contain the proper formal words, of which "resigno," "resign," is one, but not the only one that is necessary. The benefice or ecclesiastical preferment is not vacant until the resignation has been accepted.

The term Resignation is now generally applied to any giving up of an office or place, even to those which are merely honorary, as a seat at a board of directors or at the council of a literary or scientific society. It is usual to accept such resignations formally, though in most cases a man may give up or withdraw from any such place, when he pleases, though he will not thereby alone free himself from any pecuniary demand to which he may in such capacity have made himself liable.

RESIGNATION BONDS. [BENEFICE, p. 352.]

RESPONDENTIA. [BOTTOMRY.]

RESTITUTION.—*Restitution of stolen goods.* By 7 & 8 Geo. IV. c. 29, § 57, if any person guilty of a felony or misdemeanor under that act, in stealing, converting, or receiving any property, shall be indicted for such offence by the owner or his executor, and convicted, the property shall be restored to the owner, and the court before whom the person shall be convicted shall have power to award writs of restitution for the property, or order it to be restored in a summary manner. Provided that if it shall appear that any valuable security shall have been *bonâ fide* paid or discharged by some person liable to pay it, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery by some person for a valuable consideration, without any reasonable ground to suspect that it had been stolen, &c., then the court shall not order the restitution of such security.

Before this Act, the owner was in all cases entitled to restitution on conviction for a felony, but not for a misdemeanor. By the 10 & 11 Vict. c. 82, justices of peace who have obtained by the act an extraordinary power of summary conviction of juvenile offenders under four-

teen years of age for theft, may order restitution of the stolen property.

REVERSION. "Reversion of land is a certain estate remaining in the lessor or donor, after the particular estate and possession conveyed to another by lease for life, for years, or gift in tail. And it is called a reversion in respect of the possession separated from it: so that he that hath the one, hath not the other at the same time, for being in one body together, there cannot be said a reversion, because by the uniting, the one of them is drowned in the other. And so the reversion of land is the land itself when it falleth." (*Termes de la Ley.*) Thus if a man seised in fee simple conveys lands to A for life, or in tail, he retains the reversion in fee simple. In all cases where the owner of land or the person who has an estate in land, grants part only of his estate, he has a reversion; and as the grantee holds of him, there is tenure between them, and the grantor has a seignory by virtue of having a reversion. When a man grants all his estate to another, or grants a particular estate to A, and various remainders over, remainder to F in fee, he has no reversion left, and therefore he has no seignory since the passing of the statute of Quia Emptores. The remainder-men also who precede the remainder-man in fee, do not hold of such remainder-man, but of the lord of the fee of whom the original owner held. The word reversion is often used inaccurately, and it is sometimes necessary to recur to its strict legal signification.

Before the passing of the statute De Donis, if a man seised in fee simple granted his lands to a man and the heirs of his body, he had no reversion, for the grantee was considered to have a conditional fee. But since this statute, an estate to a man and the heirs of his body has always been considered to be a particular estate.

If a man grants a lease of lands in possession, at common law, he has no reversion until the lessee enters by virtue of his lease, for the lessee has no estate until he enters; but if the term of years is created under the Statute of Uses, as by bargain and sale, the lessee has a

vested estate by virtue of the statute, without entering on the land, and consequently the lessor has a reversion. It is said that a reversion cannot be created by deed or other assurance, but arises from construction of law. This means that a reversion is not created by the act of the party who conveys part of his estate, but is a legal consequence of his acts. If a man seised in fee simple limits his estate to another for life or in tail, remainder to himself in fee or to his own right heirs, he has not a remainder, but a reversion. Yet by a recent statute (3 and 4 Wm. IV. c. 106) the effect of such a limitation is to vest such remainder in fee in the settlor by *purchase*, and he is not to be considered to be entitled to it as his former estate or part thereof.

A reversion is a vested estate, which may be granted or conveyed, and charged like an estate in possession; and in some cases the reversioner in fee may bring an action, as well as the tenant in possession, for an injury to his inheritance.

Fealty is an inseparable incident to a reversion. There may or may not be a rent reserved, but fealty is always due from the owner of the particular estate to the reversioner, and it cannot be separated from the reversion, though the rent, if there is one reserved, may be separated from it. Reversions which are expectant on estates for years are subject to dower and courtesy; but this is not the case with reversions expectant on a freehold estate.

By a recent Act (3 and 4 Wm. IV. c. 104), reversionary estates or interests in lands, tenements, and hereditaments, corporeal and incorporeal, are assets to be administered in courts of equity for the payment of a person's debts both on simple contract and on speciality, when such person shall not by his last will have charged such estates or interests with or devised them subject to the payment of his debts.

RIGHT. It has been shown in LAW [i. p. 174] that the word *right* occurs under some form in all the Teutonic languages; and that it bears a double meaning equivalent to the significations of the Latin

word *jus*, namely, *law* and *faculty*. The Anglo-Saxon word bore this double meaning, but *right*, in modern English, has lost the signification of *law*, and has retained only its other meaning.

Right, in its strict sense, means a legal claim; in other words, a claim which can be enforced by legal remedies, or a claim the infringement of which can be punished by a legal sanction. It follows from this definition that every right presupposes the existence of positive law.

The causes of rights, or the modes of acquiring them, are various, and can only be explained in a system of jurisprudence; for example, a person may acquire a right by contract, by gift, by succession, by the non-fulfilment of a condition.

Every right correlates with a legal duty, either in a determinate person or persons or in the world at large. Thus a right arising from a contract (for example, a contract to perform a service, or to pay a sum of money) is a right against a determinate person or persons; a right of property (or dominion) in a field or house, is a right to deal with the field or house, availing against the world at large. On the other hand, every legal duty does not correlate with a right; for there are certain absolute duties which do not correlate with a right in any determinate person. Such are the duties which are included in the idea of police; as the duties of cleanliness, order, quiet at certain times and places.

The word right is sometimes used, improperly and secondarily, to signify not legal but moral claims: that is to say, claims which are enforced merely by public opinion, and not by the legal sanction.

In this sense the right of a slave against his master, or of a subject against his sovereign, may be spoken of, although a slave has rarely any legal right against his master, and a subject never has a legal right against his sovereign. It is in the same sense that a sovereign government is sometimes said to have rights against its subjects, although in strictness a sovereign government creates rights, and does not

possess them. In like manner, one sovereign government is said to have rights against another sovereign government; that is to say, moral rights, derived from the positive morality prevailing between independent nations, which is called *international law*.

We likewise sometimes hear of certain rights, styled natural rights, which are supposed to be anterior to civil government, and to be paramount to it. Hence these supposed natural rights sometimes receive all the additional epithets of indefeasible, indestructible, inalienable, and the like. This theory of natural rights is closely connected with the fiction of a social compact made between persons living in a state of nature; which theory, though recommended by the authority of Locke, has now been abandoned by nearly all political speculators.

RIGHT OF COMMON. [COMMONS, RIGHTS OF.]

RIGHT, PETITION OF. [PETITION OF RIGHT.]

RIGHTS, BILL OF. [BILL OF RIGHTS.]

RIGHTS, DECLARATION. [BILL OF RIGHTS.]

RIOT. A riot is a misdemeanour at common law. The definition of it given by Hawkins, and which appears to have been very generally adopted without much alteration by subsequent writers, is "a tumultuous disturbance of the peace by three persons or more, assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." But if the enterprise is for the purpose of redressing grievances generally throughout the kingdom, or to pull down all inclosures, the offence is not a riot, but amounts to a levying of war against the king, and the parties engaged in it are guilty of high treason.

Violence, if not of actual force, yet in gesture or language, and of such a nature as to cause terror, is a necessary ingre-

dient in the offence of riot. The lawfulness of the enterprise operates no further than as justifying a mitigation of the punishment. It does not in any way alter the legal character of the offence. All parties present at a riot who instigate or encourage the rioters, are themselves also to be considered as principal rioters.

Various Acts of Parliament have been passed for the purpose of giving authority to magistrates and others for the purpose of suppressing riots, and restraining, arresting, and punishing rioters. These are collected and commented upon by Hawkins (1 *P. C.*, b. i., c. 65) and Burn (5 vol., 'Riot,' &c.). The most important is 1 Geo. I., st. ii., c. 5, commonly called the Riot Act. By that statute it is provided that "if any persons to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall continue so assembled for the space of an hour after a magistrate has commanded them by proclamation to disperse, they shall be considered felons."

The form of proclamation is given in the Act, and is as follows:—

"Our sovereign lady the queen chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George, for preventing tumults and riotous assemblies.

"God save the Queen."

This is directed to be read with a loud voice and as near as possible to the rioters; no word must be omitted. Persons who do not disperse within the hour may be seized and apprehended by any magistrate or peace-officer, or any private person who has been commanded by a magistrate or officer to assist. In case of resistance, those who are attempting to disperse or apprehend the rioters will be justified in wounding or killing them. It is felony also to oppose the reading of the proclamation; and if the reading should be prevented, those who do not disperse are still guilty of felony,



if they know that the reading of the proclamation has been prevented.

A prosecution under this Act must be commenced within a year after the offence has been committed. By the 7 & 8 Geo. IV., c. 30, s. 8, rioters who demolish or begin to demolish a church or a chapel, a dwelling-house, or any other of the various buildings or machinery mentioned in that Act, are to be considered as felons. By 7 & 8 Geo. IV., c. 31, provision is made for remedies against the hundred in case of damage done by rioters.

By that Act compensation may be recovered by action against the hundred for any injury done to buildings, or furniture, &c., contained in them, to the amount of 30*l*. Where the damage does not amount to 30*l*., inquiry may be made on oath of the claimant, or other witnesses, before justices at a petty sessions, who are authorised to make an order for payment of damages and costs. An inhabitant of the hundred is made a competent witness for the defendants. In order to recover in either of these proceedings, it is necessary to show that a riot has been committed; and in case the building, &c., has not been demolished, to show that the rioters had *begun to demolish* it; that is, that their intent was to demolish, although from some reason that intent has not been carried into execution. Unless this intent is proved, the party is not entitled to compensation, however great damage may have been done; and if the intent did exist in the mind of the rioters, compensation is still claimable, however slight the damage. If the rioters have been interrupted in their proceedings, it will be left to the jury, or it will be for the justices to say, whether, without such interruption, a demolition would have been effected. But if the rioters have voluntarily retired without effecting a demolition, or if, though disturbed, their intent, from other circumstances, appears to have been directed towards some other object, as for instance to compel persons to illuminate, &c., the parties injured will have no remedy under the statute, as it appears that there was no intent to demolish.

The action must be commenced within three months after the commission of the offence; and to entitle the party injured to bring an action, he, if he had knowledge of the circumstances, or the party in charge of the property, must, within seven days after the injury done, go before a magistrate and give on oath all the information relative to the matter which he possessed, and also be bound over to prosecute the offenders.

With respect to unlawful assemblies of a seditious character, various provisions are enacted by 39 Geo. III., c. 79 and 57 Geo. III., c. 19; and in reference to those for training to the use of arms, by 60 Geo. III., c. 1. [SEDITION.]

(Hawkins, *P. C.*; East, *P. C.*; Burn's *Justice*, vol 5, 'Riot,' &c.; Russell, *On Crimes*.) [LAW, CRIMINAL, p. 182.]

#### RIOT ACT. [RIOT.]

RIVER. In a legal sense rivers are divisible into fresh and salt-water rivers. Salt-water rivers are those rivers or parts of rivers in which the tide ebbs and flows. Rivers are also divisible into public or navigable rivers and private rivers.

The property in fresh-water rivers, whether public or private, is presumed to belong to the owners of the adjacent land; the owner on each side being entitled to the soil of the river and the right of fishing as far as the middle of the stream. But this presumption may be rebutted by evidence of special usage to the contrary. For instance, it may be shown that the river belongs to one person, and the adjacent land to another; or that one party owns the river and the soil of it, and another the free or several fishery of the river. If a fresh-water river between the lands of two owners gains on one side by insensibly shifting its course, each owner continues to retain half the river, and the insensible addition by alluvium belongs to the land to which it attaches itself; unless the lands of the proprietors on each side have been marked out by other known boundaries, such as stakes, in the river. This part of the law as to the acquisition by alluvio, is stated by Bracton in the chapter "*De acquirendo rerum dominio*" (fol. 9), and his statement both in substance and expression is taken from the *Digest* (41, tit. 1,

s. 7), with which Gaius may be compared (ii. 70). But if the course of the river is changed suddenly and sensibly, then the boundaries of the lands will be, as they were before, in the midst of the deserted channel of the river. Though fresh-water rivers are presumed to be the property of adjacent landowners, yet such owner cannot set up a ferry and demand a toll unless by prescription or by charter from the king.

In those rivers which are navigable, and in which the public have a common right to a passage, the king is said to have "an interest in jurisdiction," and this is so not only in those parts of them which are the king's property, but also where they are become private property; such rivers are called "*fluvii regales*," "*haut streames le roy*," "royal rivers;" not as indicating the property of the king in the river, but because of their being dedicated to the public use, and all things of public safety and convenience being under his care and protection. Thus a common highway on land is called the king's highway, and navigable rivers are in like manner the king's highway by water. Many of the incidents belonging to a highway on land attach to such rivers. Accordingly any nuisances or obstructions upon them may be indicted even though the nuisances be in the private soil of any person; or the nuisances and obstructions may be abated by individuals without process of law. But all the incidents of a land highway do not attach to such rivers. Thus, if the highway of the river is obstructed, a passenger will not be justified, as he would be in the case of a land highway, in passing over the adjacent land. Though a river is a public navigable river, there is not therefore any right at common law for parties to use the banks of it as a towing-path. (*Ball v. Herbert*, 3 *T. R.*, 253.)

If a river which is private in use as well as in property be made navigable by the owner, it does not therefore become a public river unless from some act it may be presumed that he has dedicated it to the public. The taking of toll is such an act. Callis says that the soil of the sea and of royal rivers belongs to the king. But the expression, if intended to apply

to all parts of the rivers where the public have a right of passage, appears too comprehensive.

But there is no doubt that in some such rivers the property may be in the crown; as it was in the river Thames, the property in which, both as to the water and the soil, was conveyed by charter to the lord mayor and citizens of London. And in all rivers as far as the tide flows, the property of the soil is in the king, if no other claims it by prescription. In navigable rivers where the tide flows, the liberty of fishery is common and public to all persons. (*Hale, De Jure Maris et Brachiorum ejusdem*; *Callis, On Sewers*.)

The mere running water belongs to no one; but the proprietor of adjoining land is entitled to the reasonable use of it as it runs by his land. "And consequently no proprietor can have the right to use the water to the prejudice of any other proprietor. Without the consent of the other proprietors who may be affected by his operations, no proprietor can either diminish the quantity of water which would otherwise descend to the proprietors below, or throw the water back upon the proprietors above. Every proprietor who claims a right either to throw the water back above, or to diminish the quantity of water which is to descend below, must, in order to maintain his claim, either prove an actual grant or licence from the proprietors affected by his operations, or must prove an uninterrupted enjoyment of twenty years."

(*Judgment of Sir J. Leach in Wright v. Howard*; *Sim. and Stuart*, 109; *Gale, On Easements*.)

#### ROAD. [WAY.]

ROBES, MASTER OF THE, an officer of the household who has the ordering of the king's robes. By statute 51 Henry III., the "*Gardein de la Garde-robe de Roi*," the warden of the king's wardrobe, was to make account yearly in the Exchequer, on the feast of St. Margaret. Under a queen, the designation of the office is changed to that of a mistress of the robes. The office has always been one of dignity. High privileges were conferred upon it by King Henry VI., and others by King James I.

who erected the office of master of the robes into a corporation.

ROGUE AND VAGABOND. [VAGRANT.]

ROLLS COURT. [CHANCERY.]

ROLLS, MASTER OF THE. [CHANCERY.]

ROLLS. [RECORDS.]

ROMAN CATHOLICS. [CATHOLIC CHURCH; ESTABLISHED CHURCH; RESCUSANTS.]

ROMAN LAW. The historical origin of the Roman Law is unknown, and its fundamental principles, many of which even survived the legislation of Justinian, are older than the oldest records of Italian history. The foundation of the strict rules of the Roman law as to familia, agnatio, marriage, testaments, succession to intestates, and ownership, was probably custom, which being recognised by the sovereign power, became law. As in many other states of antiquity, the connexion of the civil with the ecclesiastical or sacred law was most intimate; or rather, we may consider the law of religion as originally comprehending all other law, and its interpretation as belonging to the priests and the king exclusively. There was however direct legislation even in the period of the kings. These laws, which are mentioned under the name of *Leges Regiæ*, were proposed by the king, with the approbation of the senate, and confirmed by the *populus* in the *Comitia Curiata*, and, after the constitution of *Servius Tullius*, in the *Comitia Centuriata*. That there were remains of this ancient legislation existing even in the Imperial period, is certain, as appears from the notice of the *Jus Civile Papirianum* or *Papirianum*, which the *Pontifex Maximus Papirius* is said to have compiled from these sources, about or immediately after the expulsion of *Tarquinius Superbus* (*Dig.*, i., tit. 2), and from the distinct references to these *Leges* made by late writers. Still there is great uncertainty as to the exact date of the compilation of *Papirius*, and its real character. Even his name is not quite certain, as he is variously called *Gaius*, *Sextus*, and *Pulius*. (*Dion. Hal.*, iii. 36; *Dig.*, i., tit. 2.)

But the earliest legislation of which

we have any important remains is the compilation called the *Twelve Tables*. The original tables indeed are said to have perished in the conflagration of the city after its capture by the Gauls, but they were satisfactorily restored from copies and from memory, for no ancient writer who cites them ever expresses a doubt as to the genuineness of their contents. It is the tradition that a commission was sent to Athens and the Greek states of Italy, for the purpose of examining into and collecting what was most useful in their codes; and it is also said that *Hermodorus of Ephesus*, then an exile in Rome, gave his assistance in the compilation of the code. There is nothing improbable in this story, and yet it is undeniable that the laws of the *Tables* were based on Roman and not on Greek or Athenian law. Their object was to confirm and define perhaps rather than to enlarge or alter the Roman law, except in some few matters; and it is probable that the laws of *Solon* and those of other Greek states, if they had any effect on the legislation of the *Decemviri*, served rather as models of form than as sources of positive rules. The *Twelve Tables* were a body of constitutional law as well as other law.

Ten tables were completed and made public by the *Decemviri*, in B.C. 451, and in the following year two other tables were added. This compilation is quoted by the ancient writers by various titles: *Lex XII. Tabularum*, *Leges XII.*, sometimes *XII.* simply (*Cic.*, *Legg.*, ii. 23), *Lex Decemviralis*, and others. The rules contained in these tables long continued to be the foundation of Roman Law, and they were never formally repealed. The laws themselves were considered as a text-book, and they were commented on by the Jurists as late as the age of the Antonines, when *Gaius* wrote a commentary on them in six books (*Ad Legem XII. Tabularum*). The actions of the old Roman law, called *Legitimæ*, or *Legis Actiones*, were founded on the provisions of the *Twelve Tables*, and the demand of the complainant could only be made in the precise terms which were used in the *Tables*. (*Gaius*, iv. 11.) The rights of action were consequently very limited, and they were only subse-

quently extended by the Edicts of the Prætors. The brevity and obscurity of this ancient legislation rendered interpretation necessary in order to give the laws any application; and both the interpretation of the laws and the framing of the proper forms of action belonged to the College of Pontifices. The civil law was thus still inseparably connected with that of religion (*Jus Pontificium*), and its interpretation and the knowledge of the forms of procedure were still the exclusive possession of the patricians.

The scanty fragments of the Twelve Tables hardly enable us to form a judgment of their character or a proper estimate of the commendation bestowed on them by Cicero (*De Or.*, i. 43.) It seems to have been the object of the compilers to make a complete set of rules both as to religious and civil matters; and they did not confine themselves to what the Romans called private law, but they comprised also public law ("*Fons publici privatique juris*," *Liv.*, iii. 34.) They contained provisions as to testaments, successions to intestates, the care of persons of unsound mind, theft, homicide, interments, &c.

They also comprised enactments which affected a man's status, as for instance the law contained in one of the two last Tables, which did not allow to a marriage contracted between a patrician and a plebeian the character of a legal Roman marriage, or, in other words, declared that between patricians and plebeians there could be no *Connubium*. Though great changes were made in the *Jus Publicum* by the various enactments which gave to the plebeians the same rights as the patricians, and by those which concerned public administration, the fundamental principles of the *Jus Privatum*, which were contained in the Tables, remained unchanged, and are referred to by jurists as late as the time of Ulpian.

The old *Leges Regiæ*, which were collected into one body by Papius, were commented on by Granius Flaccus in the time of Julius Cæsar (*Dig.*, i. tit. 16, s. 141), and thus they were probably preserved. The fragments of these laws have been often collected, but the best essay upon them is by Dirksen, '*Ver-*

*suchen zur Kritik und Auslegung der Quellen des Römischen Rechts*,' Leipzig, 1823. The fragments of the Twelve Tables also have been often collected. The best works on the subject are that by James Godefroy (Jac. Gothofredus), and the more recent work of Dirksen, '*Uebersicht der bisherigen Versuche zur Kritik und Herstellung des Textes der Zwölf-Tafel-Fragmente*,' Leipzig, 1824.

For about one hundred years after the Legislation of the Decemviri, the patricians retained their exclusive possession of the forms of procedure. Appius Claudius Cæcus drew up a book of the forms of actions, which it is said that his clerk Cnaeus Flavius stole and published; the fact of the theft may be doubted, though that of the publication of the forms of procedure, and of a list of the *Dies Fasti* and *Nefasti*, rests on sufficient evidence. The book thus made public by Flavius was called *Jus Civile Flavianum*; but like that of Papius it was only a compilation. The publication of these forms must have had a great effect on the practice of the law: it was in reality equivalent to an extension of the privileges of the plebeians. Subsequently Sextus Aelius published another work, called "*Jus Aelianum*," which was more complete than that of Flavius. This work, which was extant in the time of Pomponius (*Dig.*, i. tit. 2, s. 2, § 39), was also called "*Tripartita*," from the circumstance of its containing the laws of the Twelve Tables, a commentary upon them (*interpretatio*), and the *Legis Actiones*. This work of Aelius appears to have been considered in later times as one of the chief sources of the civil law (*veluti cunabula juris*); and he received from his contemporary Ennius the name of "*wise*."

"*Egregie cordatus homo catus Aelius Sextus.*"

Sextus Aelius was *Curule Aedile*, B.C. 200, and *Consul*, B.C. 198.

In the Republican period new laws (*leges*) were enacted both in the *Comitia Centuriata* and in the *Comitia Tributa*. The *Leges Curiatæ*, which were enacted by the *curiæ*, were limited to cases of *adrogation* and the conferring of the *imperium*. The *Comitia Centuriata* were made independent of the *Curiata* by the

Lex Publilia (Liv., viii. 12), which declared that the *leges* passed in these *Comitia* should not require the confirmation of the *patres*, that is, the *Comitia Curiata*. The *leges* passed in the *Comitia Tributa* were properly called *Leges Tributae* or *Plebiscita*, and originally they were merely proposals for a law which were confirmed by the *curiae*. But the *Lex Publilia* (B.C. 336), and subsequently the *Lex Hortensia* (B.C. 286), gave to the *Plebiscita* the full force of *leges* without the consent of the *patres* (Liv., viii. 12; Gaius, i. 3; Gell., xv. 27); and a *Plebiscitum* was accordingly sometimes called a *lex*. The *leges* generally took their name from the gentile name of the magistrate who proposed them (*rogavit*), and sometimes from the name of both consuls, as *Lex Aelia* or *Aelia Sentia*, *Papia* or *Papia Poppaea*. If the proposer of the law was a dictator, praetor, or tribune, the *Lex* or *Plebiscitum*, as the case might be, took its name from the proposer only, as *Lex Hortensia*. Sometimes the object of the *lex* was indicated by a descriptive term, as *Lex Cincia de donis et muneribus*.

The *Senatus Consulta* also formed a source of law under the republic. That a *senatus consultum* in the time of Gaius (i. 4) should have the force of law (*vicem legis optinet*), may be easily admitted; but Gaius in this passage appears to be referring not only to such *senatus consulta* as had been passed under the empire, but to the *senatus consulta* generally as a source of law. Probably the senate gradually came to be considered in some degree as the representative of the *curiae*, and its *consulta*, in many matters relating to administration, the care of religion, the aerarium, and the administration of the provinces, had the full effect of laws. It does not seem as if the Romans themselves had a very clear notion of the way in which the senate came to exercise the power of legislation; but they imagined that it arose of necessity with the increasing population of the state and the increase of public business. The senate thus became an active administering body, and, as an easy consequence, that which it enacted (*constituit*) was observed, and this new source of law was termed *Senatus Consultum* (*Dig.*, i., tit. 2). It

seems probable that the senate began to exercise the power of making *senatus consulta* after the passing of the *Hortensia Lex*, though it is not pretended that the *Hortensia Lex* or any other *Lex* gave this power to the senate. No *senatus consulta* are recorded as designated by the names of magistrates, till the time of Augustus, a circumstance which seems to show that whatever binding authority *senatus consulta* might have acquired under the Republic, they were not then viewed as laws properly so called. But from the time of Augustus, the titles of *senatus consulta* frequently occur; their names, like those of most of the *leges*, were derived from the consuls, as *S. C. Velleianum*, *Pegasi-anum*, *Trebellianum*, &c., or of the emperor who proposed them, as *S. C. Claudianum*, *Neronianum*, &c., or they were said to be made "*auctore Principe*," or "*ex auctoritate Principis*." The expression applied to the senate, so enacting, was "*censere*." (Gaius, i. 47.) Special *consulta* were sometimes passed for the purpose of explaining or rendering effectual previous *leges*.

A new source of law was supplied by the *Edicta* of those magistrates who had the *Jus Edicendi*, but mainly by the praetors, the praetor urbanus and the praetor peregrinus. The edicts of the praetor urbanus were the most important. The body of law which was formed by the *Edicta* is accordingly sometimes called *Jus Praetorium*, which term however might be limited to the *Edicta* of the praetors, as opposed to those of the curule aediles, the tribunes, censors, and pontifices. The name *Jus Honorarium*, as opposed to *Jus Civile*, comprehends the whole body of edictal law; and the name *Honorarium* was given to it, apparently because the *Jus Edicendi* was exercised only by those magistratus who had the *Honores*. *Jus Civile* in its larger sense comprehended all the law of any given nation; but the *Jus Civile Romanorum*, as opposed to the *Honorarium*, consisted of *Leges*, *Plebiscita*, *Senatus Consulta*, to which, under the empire, were added the *Decreta Principum* and the *Auctoritas Prudentium*. The *Honorarium Jus* was introduced for the purpose of aiding, supplying, and correcting the defects of the

*Jus Civile Romanorum* in its limited sense. (*Dig.*, i., tit. 1, s. 7.) The nature of the Roman Edictal Law is explained at the end of the article *EQUIT*.

With the establishment of the Imperial Constitution begins a new epoch in the Roman law. The leges of Augustus and those of his predecessor had some influence on the *Jus Privatum*, though they did not affect the fundamental principles of the Roman law. A *Lex Julia* came into operation, B.C. 13, but it is better known as the *Lex Julia et Papia Poppaea*, owing to the circumstance of another lex of the same import, but less severe in its provisions, being passed as a kind of supplement to it in the consulship of M. Papius Mutilus and Q. Poppaeus Sennecus, A.D. 9. This law had for its object the encouragement of marriage, but it contained a great variety of provisions. A *Lex Julia de Adulteriis*, which also contained a chapter on the *dos*, is of uncertain date, but was probably passed before the former *Lex Julia* came into operation. Several *Leges Juliae Judiciariae* are also mentioned, which related both to *Judicia Publica* and *Privata*, and some of which may probably belong to the time of the dictator Cæsar.

The development of the Roman law in the Imperial period was little affected by direct legislation. New laws were made by *Senatus Consulta*, and subsequently by the *Constitutiones Principum*; but that which gives to this period its striking characteristic is the effect produced by the *Responsa* and the writings of the Roman jurists.

So long as the law of religion or the *Jus Pontificium* was blended with the *Jus Civile* in its limited sense, and the knowledge of both was confined to the patricians, jurisprudence was not a profession. But with the gradual separation of the *Jus Civile* and *Pontificium*, which was partly owing to the political changes by which the estate of the plebeians was put on a level with that of the patricians, there arose a class of persons who are designated as *Jurisperiti*, *Jurisconsulti*, *Prudentes*, and by other equivalent names. Of these *jurisconsulti* the earliest on record is Tiberius Coruncanus, a plebeian *Pontifex Maximus*, and consul B.C. 380:

he is said to have been the first who professed to expound the law to any person who wanted his assistance; he left no writings, but many of his *Responsa* were recorded. Tiberius Coruncanus had a long series of successors who cultivated the law, and whose *responsa* and writings were acknowledged and received as a part of the *Jus Civile*. The opinions of the *jurisconsulti*, whether given upon questions referred to them at their own houses, or with reference to matters in litigation, were accepted as the safest rule by which a *judex* or an *arbiter* could be guided. Accordingly, the mode of proceeding, as it is described by Pomponius, is perfectly simple; the *judices* in difficult cases took the opinion of the *jurisconsulti*, who gave it either orally or in writing. Augustus, it is said, gave the *responsa* of the jurists a different character. Before his time, their *responsa*, as such, could have no binding force, and they only indirectly obtained the character of law by being adopted by those who were empowered to pronounce a sentence. Augustus gave to certain jurists the *respondendi jus*, and declared that they should give their *responsa* "*ex ejus auctoritate*." In the time of Gaius (i., 7) the *Responsa Prudentium* had become a recognised source of law; but he observes that the *responsa* of those only were to be so considered who had received permission to make law (*jura condere*); and he adds that if they all agreed, their opinion was to be considered as law; if they disagreed, the *judex* might follow which opinion he pleased. The matter is thus left in some obscurity, and, for want of more precise information, we can only conjecture what was the precise way in which these licensed jurists under the empire were empowered to declare the law. It is however clear, both from the nature of the case and the statement of Gaius, that their functions were limited to exposition, or to the declaration of what was law in a given case, and that they had no power to make new rules of law as such; further, the licensed jurists must have formed a body or college, for otherwise it is not possible to conceive how the opinions of the majority could be ascertained on any given occasion.

The commencement of a more systematic exposition of law under the empire is indicated by the fact of the existence of two distinct sects or schools (*scholae*) of jurists. These schools originated under Augustus, and the heads of each were respectively two distinguished jurists, Antistius Labeo and Ateius Capito. But the schools took their names from other jurists. The followers of Capito's school, called Sabiniani, derived their name from Massurius Sabinus, a pupil of Capito, who lived under Tiberius and as late as the time of Nero: sometimes they were called Cassiani, from C. Cassius Longinus, another distinguished pupil of Capito. The other school was called Proculiani, from Proculus, a follower of Labeo. If we may take the authority of Pomponius, the characteristic difference of the two schools was this: Capito adhered to what was transmitted, that is, he looked out for positive rules sanctioned by time; Labeo had more learning and a greater variety of knowledge, and accordingly he was ready to make innovations, for he had more confidence in himself; in other words, he was a philosophical more than an historical jurist. Gaius, who was himself a Sabinian, often refers to discrepancy of opinion between the two schools; but it is not easy to collect from the instances which he mentions, what ought to be considered as their characteristic differences. Much has been written on the characteristics of these two schools; but nearly all that we know is contained in the few words of Pomponius, of which Puchta (*Cursus der Institutionen*, i. 433) has given perhaps the most satisfactory exposition.

The jurisprudentes were not only authorised expounders of law, but they were most voluminous writers. Massurius Sabinus wrote three books *Juris Civilis*, which formed the model of subsequent writers. The commentators on the *Edict* were also very numerous, and among them are the names of Pomponius, Gaius, Ulpian, and Paulus. Gaius wrote an elementary work, which furnished the model of the *Institutiones* of Justinian. Commentaries were also written on various *Leges*, and on the *Senatus Consulta* of the Imperial period; and finally, the

writings of the earlier jurists themselves were commented on by their successors. The long series of writers to whom the name of classical jurists has been given, ends, about the time of Alexander Severus, with Modestinus, who was a pupil of Ulpian. Some idea may be formed of the vast mass of their writings from the titles of their works as preserved in the 'Digest,' and from the 'Index Florentinus;' but with the exception of the fragments which were selected by the compilers of that work, this great mass of juridical literature is nearly lost.

Among the sources of law in the Imperial period are the Imperial Constitutions, the nature of which has been explained. [CONSTITUTIONS, ROMAN.]

With the decline of Roman jurisprudence began the period of compilations or codes, as they were termed. The earliest were the *Codex Gregorianus* and *Hermogenianus*, which are only known from fragments. The *Codex Gregorianus*, so far as we know it, began with the constitutions of Sept Severus, and ended with those of Diocletian and Maximian. The *Codex Hermogenianus*, so far as it is known, contained constitutions also of Diocletian and Maximian, and perhaps some of a later date. Though these codes were mere private collections, they apparently came to be considered as authority, and the codes of Theodosius and Justinian were formed on their model.

The code of Theodosius was compiled under the authority of Theodosius II., emperor of the East. It was promulgated as law in the Eastern empire, A.D. 438; and in the same year it was confirmed as law in the Western empire by Valentinian III. and the Roman senate. This code consists of sixteen books, the greater part of which, as well as of the *Novellæ*, subsequently promulgated by Theodosius II. are extant in their original form. The commission who compiled it were instructed to collect all the *Edicta* and *Leges Generales* from the time of Constantine, and to follow the *Codex Gregorianus* and *Hermogenianus* as their model. Though the arrangement of the subsequent code of Justinian differs considerably from that of Theodosius, it is clear from a comparison of them that the com-

pilars of Justinian's code were greatly aided by that of his Imperial predecessor. The valuable edition of the Theodosian Code, by J. Gothofredus (6 vols. fol., Lugd., 1665), re-edited by Ritter, Leipzig, 1736-1745, contains the first five books and the beginning of the sixth, only as they are epitomized in the Breviarium; and this is also the case with the edition of the 'Jus Civile Antejustinianum,' published at Berlin in 1815. But recent discoveries have greatly contributed to improve the first five books. The most recent edition of the 'Jus Civile Antejustinianum' is that of Bonn, 1835 and 1837.

The legislation of Justinian is treated of under JUSTINIAN'S LEGISLATION.

There are numerous works on the history of the Roman law, but it will be sufficient to mention a few of the more recent, as they contain references to all the earlier works: *Lehrbuch der Geschichte des Römischen Rechts*, by Ingo, of which there are numerous editions; *Geschichte des Römischen Privatrechts*, by Zimmern; *Geschichte des Römischen Rechts*, by F. Walter, 1840; and for the later history of the Roman law, *Geschichte des Römischen Rechts im Mittelalter*, by Savigny.

ROUNDHEADS, a name given to the republicans in England, at the end of the reign of Charles I. and during the Commonwealth. The name seems to have been first applied to the Puritans because they wore their hair cut close, but to have been afterwards extended to the whole republican party. The Cavaliers, or royal party, wore their hair in long ringlets.

ROYALTY. The French words *roi* and *royal* correspond to the Latin words *rex* and *regalis*; and from *royal* has been formed *royauté* (now *royauté*); whence has been borrowed the English word *royalty*. The corresponding Latin word is *regalitas*, which occurs in the Latin of the middle ages. (Ducange, *in v.*)

*Royalty* properly denotes the condition or *status* of a person of royal rank, such as a king or queen, or reigning prince or duke, or any of their kindred. The possession of the royal *status* or condition does not indicate that the pos-

essor of it is invested with any determinate political powers; and therefore *royalty* is not equivalent to *monarchy* or *sovereignty*. A royal person is not necessarily a monarch; or, in other words, does not necessarily possess the entire sovereign power. The powers possessed by persons of royal dignity have been very different in different times and places; and have varied from the performance of some merely honorary functions to the exercise of the entire sovereignty. [KING, SOVEREIGNTY.]

In popular discourse *royalty* is made equivalent to *monarchy* or *sovereignty*; and a king is called monarch or sovereign without any reference to the fact whether he possesses the entire sovereign power or only a portion of it. The principal causes of this confusion are stated in MONARCHY. The confusion is attended with important consequences both in speculative and practical politics.

RUBRIC (from the Latin *rubrica*, a kind of red earth or stone), a name given to the titles of chapters in certain ancient law-books: and more especially to the rules and directions laid down in our Liturgy for regulating the order of the service. These, in both instances, were formerly written or printed, as the case might be, for distinction's sake in red characters, and have retained the name, though now printed in black. In the Latin language *rubrica* has like meanings. It signifies a heading or title of the things which are contained in a law or in an edict. Thus there was an interdict called *Unde vi* from its initial word, and *Unde vi* was accordingly the *rubrica* or heading under which the edict would be found (*Dig.* 43, tit. 16).

RULE (in Law) is an order of one of the three superior courts of Common Law. Rules are either general or particular.

General rules are such orders relating to matters of practice as are laid down and promulgated by the court. They are a declaration of what the court will do, or require to be done, in all matters falling within the terms of the rule. The power of issuing rules for regulating the practice of each court is incident to the jurisdiction of the court. By a re-



cent Act of Parliament (3 & 4 Wm. IV. c. 42), the judges were authorised within five years from the date of it (1833) to make rules of a more comprehensive nature, relating especially to pleading in civil actions. These rules after being laid before both houses of parliament within certain times mentioned in the Act, were to have "the like force and effect as if the provisions contained therein had been expressly enacted by parliament." In exercise of this authority, a number of rules, generally called "The New Rules," have been promulgated, which have introduced very material changes in the mode of pleading. (*Stevens on Pleading*; *Chitty on Pleading*; *Jervis on the New Rules*.) Formerly each court of common law issued its own general rules, without much regard to the practice in the other courts. Of late the object has been to assimilate the practice in all the courts of common law.

Rules not general are such as are confined to the particular case in reference to which they have been granted. Of these, some, which are said to be "of course," are drawn up by the proper officers on the authority of the mere signature of counsel, without any formal application to the court; or in some instances, as upon a judge's fiat or allowance by the master, &c., without any signature by counsel; others require to be handed in as well as signed by counsel. Rules which are not of course, are grantable on application, or, as it is technically termed, "the motion," either of the party actually interested or of his counsel. Where the grounds of the motion are required to be particularised, the facts necessary to support it must be stated in an affidavit by competent witnesses. After the motion is heard, the court either grants or refuses the rule. A rule, when granted, may, according to circumstances, be either "to show cause" or it may be "absolute in the first instance." The term "rule to show cause," also called a "rule nisi," means that unless the party against whom it has been obtained shows sufficient cause to the contrary, the rule, which is conditional, will become absolute. After a

rule nisi has been obtained, it is drawn up in form by the proper officer, and served by the party who obtains it upon the party against whom it has been obtained, and notice is given him to appear in court on a certain day and show cause against it. He may do this either by showing that the facts already disclosed do not justify the granting of the application, or he may contradict those facts by further affidavits. The counsel who obtained the rule is then heard in reply. If the court think proper to grant the application, or if no one appears to oppose it, the rule is said to be made "absolute." If they refuse the application, the rule is said to be "discharged."

Rules may be moved for either in reference to any matter already pending before the court, as for a change of venue in an action already commenced, or for a new trial, &c.; or in respect of matters not pending before the court, as for a criminal information, a mandamus, &c.

A copy of a rule obtained from the proper officer is legal proof of the existence of such a rule. (*Tidd's Practice*; *Archbold's Practice*.)

The rules which regulate the practice of the Court of Chancery are called orders.

RURAL DEAN. [DEAN.]

RUSSIA COMPANY. [JOINT STOCK COMPANY, p. 139.]

## S.

SACRILEGE (from the Latin *Sacrilegium*) is "the felonious taking of any goods out of any parish-church or other church or chapel." By the common law it was a capital offence, though the offender seems to have been entitled to the benefit of clergy at the discretion of the ordinary. But even if it were not clergyable at the common law, yet the statute 25 Edw. III. c. 4, "*De Clero*," comprehended this as well as other crimes, and gave "the privilege of holy church to all manner of clerks, as well secular as religious." Sacrilege was apparently the only felony at common law which deprived

the offender of the privilege of sanctuary.

The present state of the law of sacrilege depends on the statute 7 & 8 Geo. IV. c. 29, s. 10, which enacts that "if any person shall break and enter any church or chapel, and steal therein any chattel, or having stolen any chattel in any church or chapel, shall break out of the same, every such offender, being convicted thereof, shall suffer death as a felon."

By 9 Geo. IV. c. 55, s. 10, the same protection was extended to meeting-houses and all places of divine worship.

By statute 5 & 6 Wm. IV. c. 81, the punishment of death was abolished, and transportation for life or for any term not less than seven years, or imprisonment with or without hard labour for any term not exceeding four years, was substituted in its place. These penalties were again altered by 6 Wm. IV. c. 4, which limited the term of imprisonment to three years, and gave to the court a discretionary power of awarding any period of solitary confinement during such term. But now, by the statute 7 Wm. IV. and 1 Vict. c. 90, s. 5, no offender may be kept in solitary confinement for more than one month at a time, or three months in the space of one year.

The Roman sacrilegium was defined to be the "stealing of sacred things" (*sacrarum rerum furtum*), that is, the robbing temples or stealing things from them which had been appropriated to the purposes of religion. It was not unusual for persons to deposit their money in temples for safe keeping; and it was a doubtful question whether the stealing of such money was sacrilege. A rescript of Septimius Severus and Caracalla determined that the taking of a private person's money from a temple was only theft. (*Dig.*, xlviii., tit. 19, s. 5). In the Republican period Sacrilegium had also the wider meaning of any offence against religion, a principle which was more fully developed in the Imperial period. The *Lex Julia* on *Peculatus*, which was the embezzlement of public property, placed Sacrilegium on the same footing with *Peculatus* as to the penalties.

(Rein, *Criminalrecht der Römer*, p. 691).

SAILORS. [SHIPS.]

SALVAGE. [SHIPS.]

SANCTION. [LAW, p. 175.]

SANCTUARY, a consecrated place which gave protection to a criminal taking refuge there. The word also signified the privilege of sanctuary, which was granted by the king for the protection of the life of an offender. Under the dominion of the Normans there appear early to have existed two kinds of sanctuary; one general, which belonged to every church, and another peculiar, which originated in a grant by charter from the king. The general sanctuary afforded a refuge to those only who had been guilty of capital felonies. On reaching it, the felon was bound to declare that he had committed felony, and came to save his life. [ABJURATION OF THE REALM.] A peculiar sanctuary might, if such privilege was granted by the charter, afford a place of refuge even for those who had committed high or petty treason; and a party escaping thither might, if he chose, remain undisturbed for life. He still, however, had the option to take the oath of abjuration and quit the realm. Sanctuary seems in neither case to have been allowed as a protection to those who escaped from the sheriff after being delivered to him for execution. During the latter part of the reign of Henry VIII., at the time when the religious houses were dissolved, several statutes were passed (26 Hen. VIII. c. 13; 27 Hen. VIII. c. 19; 32 Hen. VIII. c. 12), which regulated, limited, and partially abolished the privilege of sanctuary, both as regarded the number and classes of criminals entitled to it, and also the places possessing the privilege. Finally, by 21 James I. c. 28, s. 7, it was enacted that no sanctuary or privilege of sanctuary should thereafter be admitted or allowed in any case. [ABJURATION OF THE REALM; ASYLUM.]

(Reeve's *History of the English Law*; Comyn's *Digest*, tit. 'Abjuration'; 4 Blackstone, *Com.*)

SAPPERS AND MINERS, ROYAL, the non-commissioned officers and privates of the corps of Royal Engineers. They are employed in building and repairing permanent fortifications, in raising field-redoubts and batteries, in making

gabions and fascines, in digging trenches and executing galleries of mines during sieges, and also in forming bridges of rafts, boats, and pontoons.

From 1812 to the peace in 1814, the corps of sappers and miners amounted to 2861 men; and during the hostilities in 1815, it consisted of 2421 men. At present it consists of 13 companies, each of 68 men; and, besides the regular course of instruction in sapping, mining, making gabions, fascines, &c., the men are taught the most elementary principles of fortification, the manner of drawing plans and sections of buildings, and, to a certain extent, the art of land-surveying. Several of the companies are employed in the Colonies in the exercise of their professional duties; and of those which remain in this country, some are engaged under the officers of engineers in the mechanical operations connected with the survey of Great Britain and Ireland which is being carried on by the Board of Ordnance; parties of the corps also regularly attend the Royal Military College at Sandhurst and the East India Company's seminary at Addiscombe, where they execute, for the instruction of the gentlemen-cadets, the several works connected with the practice of field-fortification. The troops of the corps have invariably, in whatever part of the world they have been employed, conducted themselves as intelligent men and steady soldiers.

**SAVINGS' BANKS** are banks established to encourage habits of prudence in the poorer classes, who were previously without any places where they could safely and profitably deposit their savings.

The origin of savings' banks has been attributed to the Rev. Joseph Smith, of Wendover, who, in the year 1799, circulated proposals, in conjunction with two of his parishioners, in which they offered to receive from any inhabitant of the parish any sum from twopence upwards every Sunday evening during the summer months, to keep an exact account of the money deposited, and to repay at Christmas to each individual the amount of his deposit, with the addition of one-third to the sum. The depositors were at liberty to demand and receive back the amount of their savings, without this addition of

one-third, at any time before Christmas, if they stood in need of their money.

The next institution of this kind that was established, of which we have any account, was founded at Tottenham, in Middlesex, by Mrs. Priscilla Wakefield. This, which was called the Charitable Bank, bore a nearer resemblance to the savings' banks of the present day than the Wendover plan. The Tottenham bank was opened in 1804. At first the accounts were kept by Mrs. Wakefield, who was assisted by six gentlemen who undertook each to receive an equal part of the sums deposited, and to allow five per cent. interest on the same to such depositors of 20 shillings and upwards as should leave their money for at least a year in their hands. In proportion as the amount of the deposits increased, additional trustees were chosen, so as to diminish the loss which might otherwise have been considerable, owing to the high rate of interest that was allowed. In 1808 a society was formed at Bath, managed by eight individuals, four of whom were ladies, who received the savings of domestic servants, and allowed interest upon the same at the rate of four per cent.

The Parish Bank Friendly Society of Ruthwell was formed in 1810 by Mr. Henry Duncan, who published an account of his institution with the hope of promoting similar establishments elsewhere. This was the first savings' bank regularly organised, which was brought before the public, and it is owing to this successful undertaking that previous to the year 1817 there were seventy savings' banks established in England, four in Wales, and four in Ireland.

In the year 1817 legislative provisions were made for the management of these institutions. Acts were passed (57 Geo. III. c. 105 and 130) for encouraging the establishment of banks for savings in Ireland and England respectively. Under these acts, the trustees and managers, who were prohibited from receiving any personal profit or advantage from the institutions, were required to enrol the rules of their institutions at the sessions. A fund was established in the office for the reduction of the national debt in London, entitled, 'The Fund for the Banks for

Savings,' and to this fund the trustees were bound to transmit the amount of all deposits that might be made with them when the sum amounted to 50*l.* or more. For the amount so invested the trustees received a debenture, carrying interest at the rate of threepence per centum per diem, or 4*l.* 11*s.* 3*d.* per centum per annum, payable half-yearly. The rate of interest then usually allowed to depositors was four per cent. In Ireland the depositors were restricted to the investment of 50*l.* in each year, and in England the same restriction was imposed, with a relaxation in favour of the first year of a person's depositing, when 100*l.* might be received. No further restriction was at this time thought necessary as to the amount invested, neither was the depositor prevented from investing simultaneously in as many different savings' banks as he might think proper. This circumstance was found liable to abuse, and an Act was passed in 1824, which restricted the deposits to 50*l.* in the first year of the account being opened, and 30*l.* in each subsequent year, and when the whole should amount to 200*l.* exclusive of interest, no further interest was to be allowed. Subscribers to one savings' bank were likewise not allowed to make deposits in any other, but the whole money deposited might be drawn from one savings' bank in order to be placed in another.

In 1828 a further Act was passed, entitled 'An Act to consolidate and amend the laws relating to Savings' Banks,' and it is under the provisions of this Act (9 Geo. IV. c. 92), and of 7 & 8 Vict. c. 83, that all savings' banks are at present conducted. It is provided by the 7 & 8 Vict. c. 83, s. 19, that two written or printed copies of all rules or alterations of rules of savings' banks, signed by two trustees, shall be submitted to the barrister appointed under 9 Geo. IV. c. 92, for his certificate, and the said barrister must return one of such copies when certified to the trustees and transmit the other to the commissioners for the reduction of the national debt. This provision stands in place of the provision in 9 Geo. IV. c. 92, which required that a transcript of the rules of a savings' bank or government annuity society should be deposited

with or filed by the clerk of the peace, and a certificate thereof returned to the institution, and that such transcript should be laid before the justices at sessions.

The money deposited in savings' banks must be invested in the Bank of England, or of Ireland, in the names of the commissioners for the reduction of the national debt. The receipts given to the trustees of savings' banks for money thus invested bear interest at the rate of 3*l.* 5*s.* per cent., and the interest paid to depositors must not exceed 3*l.* 0*s.* 10*d.* per cent. per annum, the difference being retained by the trustees to defray the expenses of the bank. The trustees are not allowed to receive deposits from any individuals whose previous deposits have amounted to 150*l.*, and when the balance due to any one depositor amounts with interest to 200*l.*, no further interest is to be allowed; and not more than 30*l.* can be deposited by one person in any one year. Trustees or treasurers of any charitable provident institution, or charitable donation or bequest for the maintenance, education, or benefit of the poor, may invest sums not exceeding 100*l.* per annum, and not exceeding 300*l.*, principal and interest included. Friendly societies whose rules have been certified pursuant to acts of parliament relating thereto, may deposit the whole or any part of their fund.

The increase of savings' banks has been great beyond all expectation. On the 20th of November, 1833, there were 385 savings' banks in England holding balances belonging to 414,014 depositors, which amounted to 13,973,243*l.*, being on an average 34*l.* for each depositor. There were at the same time in Wales 23 savings' banks, having balances amounting to 361,150*l.* belonging to 11,269 depositors, being an average of 32*l.* for each depositor; while in Ireland there were 76 savings' banks, with funds amounting to 1,380,718*l.*, deposited by 49,872 persons, the average amount of whose deposits was 28*l.* The total for England, Wales, and Ireland was consequently 484 savings' banks, with funds amounting to 15,715,111*l.*; the number of accounts open was 475,155, and the average amount of deposits was consequently 33*l.* On the 20th of November, 1833, there were

244,575 depositors of sums under 20*l.* in the savings' banks of England, Wales, and Ireland, whose savings amounted to 1,734,709*l.*, being an average of 7*l.* 1*s.* 10*d.* for each depositor.

By the 3 Wm. IV. c. 14, the industrious classes are encouraged to purchase annuities, to commence at any deferred period which the purchaser may choose, the purchase-money being paid either in one sum at the time of agreement, or by weekly, monthly, quarterly, or yearly instalments, as the purchaser may determine. The transactions under this Act are to be carried on through the medium of savings' banks, or by societies established for the purpose, and of which the rector or other minister of the parish, or a resident justice of the peace, shall be one of the trustees. The 7 & 8 Vict. c. 83, contains some fresh regulations as to these annuities, as well as to other matters that concern savings' banks. This act extends to societies for purchasing annuities as well as to savings' banks, and to Great Britain and Ireland, Berwick-upon-Tweed, Guernsey, Jersey, and the Isle of Man.

Rules framed in agreement with the statute have been issued by the commissioners for the reduction of the national debt. These rules provide, among other things, that no person being a trustee, treasurer, or manager of the society, shall derive any emolument, direct or indirect, from its funds; that the treasurer, and the paid officers of the society shall give security for the faithful execution of their trust; that the age of the party, or nominee, upon whose life the annuity is contracted, must not be under fifteen years; that no one individual can possess, or be entitled to, an annuity, or annuities, amounting altogether to more than 20*l.* (30*l.*, by the 7 & 8 Vict. c. 83), and that no annuity of less than 4*l.* can be contracted for; that minors may purchase annuities. The annuities are payable half-yearly, on the 5th of January and 5th of July, or on the 5th of April and 10th of October. If any person wishes to have an annuity payable quarterly, that object may be accomplished by purchasing one half payable in January and July, and the other half payable in April and October. Upon the death

of the person on whose life the annuity depends, a sum equal to one-fourth part of the annuity, beyond all unpaid arrears, will be payable to the person or persons entitled to such annuity, or to their executors or administrators, if claimed within two years. These annuities are not transferable, unless the purchaser becomes bankrupt or insolvent, when the annuity becomes the property of the creditors, and will be repurchased, at a fair valuation, by the commissioners for the reduction of the national debt. If the purchaser of an annuity should be unable to continue the payment of his instalments, he may at any time, on giving three months' notice, receive back the whole of the money he has paid, but without interest. If the purchaser of a deferred life annuity should die before the time arrives at which the annuity would have commenced, the whole of the money actually contributed, but not with interest, will be returned to his family without any deduction. If a person who has contracted for, or is entitled to, an annuity, becomes insane, or is otherwise rendered incapable of acting, such weekly sum will be paid to his friends for maintenance and medical attendance as the managers shall think reasonable, or any such other payments may be made as the urgency of the case may require, out of the sums standing in the name of the party. Any frauds that may be committed by means of misstatements and false certificates will render void the annuity, and subject the parties offending to other and severe penalties. The rules of societies formed for carrying into effect the purposes of this act must be signed by trustees, and duly certified by the barrister appointed for the purpose.

Annuity tables, calculated under the direction of Government, for every admissible period of age, and for every probable deferred term, may be had at the office of the commissioners for reducing the national debt, in the Old Jewry London. Every information respecting, and forms of rules, &c., for the establishment, &c. of friendly societies, building societies, loan societies, savings' banks, and government annuity societies, may be obtained free of expense, on applying by letter, post-paid, directed to the Bar



rister appointed to certify the rules of friendly societies.

The 5 & 6 Wm. IV. c. 57, passed in September, 1835, extended the provisions of the 9 Geo. IV. c. 92, and of 3 Wm. IV. c. 14, to savings' banks in Scotland, and enabled existing banks to conform to the said Acts by preparing and depositing their rules pursuant to these Acts.

Military or Regimental Savings' Banks were established by warrant dated October 11, 1843. The following is the amount of all sums deposited in them within the year ended March 31, 1844; of all sums withdrawn during the same period; and of the interest allowed upon such deposits; and also of the number of depositors on the 31st of March, 1844:—

	£	s.	d.
Amount of sums deposited	15,069	3	2
Amount of deposits withdrawn		316	11 5 $\frac{1}{4}$
Amount of interest allowed	96	10	1 $\frac{3}{4}$
Balance due by the public	14,849	1	11 $\frac{1}{2}$
Number of depositors	1,890.		

(*History of Savings' Banks*, by J. Tidd Pratt; *The Law relating to the Purchase of Government Annuities through Savings' Banks and Parochial Societies*, by the same author; *A Summary of Savings' Banks*, &c., by the same author, 1846.)

SCANDAL. [LIBEL; SLANDER.]

SCHOOLS. A school is a general name for any place of instruction. There are schools for young children, called Infant Schools; schools for children of more advanced age; and schools for the higher branches of learning, as Grammar Schools, Colleges, and Universities. There are also schools for special branches of knowledge, as schools for Agriculture, Medicine, Theology, Law, and so forth.

The school systems of all nations have something peculiar; and the peculiarities are closely connected with the political system of each country. A good system of schools of all kinds suited to the wants of a political community perhaps exists in no country, though some of the German states have perhaps approached nearer to establishing such a system than any other countries. There are two modes in which good schools may be established: a government may make the whole school system a part of ad-

ministration, and leave very little to individual enterprise and competition; or the establishment of schools of all kinds may be left nearly altogether to individual enterprise. Perhaps in no country has either the one or the other mode been altogether followed. Prussia is an instance in which the government has apparently done most in the way of directing the establishment and management of schools; and in England, of all countries which have attained a high degree of wealth and power in modern times, the government has perhaps done the least, though perhaps in no country have benevolent individuals and associations of individuals contributed so largely to the establishment of permanent places of education. England is also the country in which there are most schools kept by individuals for the object of private profit.

It is impossible to consider a state well organised which shall not, to some degree and in some manner, superintend all places for education. It is equally impossible to view education as well organised in a state, if all competition shall be excluded from the system; and in fact there is no country, not even those in which education is most directly made a branch of administration, in which some competition of some kind does not exist. In fact, if it does not exist in some form and in some degree, there will be no efficient instruction.

The general consideration of this subject is contained in the article EDUCATION.

SCHOOLS, ENDOWED. An Endowed School in England is a school which was established and is supported by funds given and appropriated to the perpetual use of such school, either by the king or by private individuals. The endowment provides salaries for the master and usher, if there is one, and gratuitous instruction to pupils, either generally or the children of persons who live within certain defined limits. Endowed schools may be divided, with respect to the objects of the founder, into grammar-schools, and schools not grammar-schools. A grammar-school is generally defined to be a school in which the learned languages,

the Latin and the Greek, are taught. Endowed schools may also be divided, with respect to their constitution for the purposes of government, into schools incorporated and schools not incorporated. Incorporated schools belong to the class of corporations called eleemosynary, which comprehends colleges and halls, and chartered hospitals or almshouses. [COLLEGE].

Endowed schools are comprehended under the general legal name of Charities, as that word is used in the act of the 43rd of Elizabeth, chap. 4, which is entitled, 'An Act to redress the Misemployment of Lands, Goods, and Stocks of Money heretofore given to Charitable Uses.' Incorporated schools have generally been founded by the authority of letters patent from the crown, but in some cases by act of parliament. The usual course of proceeding has been for the person who intended to give property for the foundation of a school, to apply to the crown for a licence. The licence is given in the form of letters patent, which empower the person to found such a school, and to make, or to empower others to make, rules and regulations for its government, provided they are not at variance with the terms of the patent. The patent also incorporates certain persons and their successors, who are named or referred to in it, as the governors of the school. This was the form of foundation in the case of Harrow School, which was founded by John Lyon, in the fourteenth year of Elizabeth, pursuant to letters patent from the queen. Sometimes the master and usher are made members of the corporation, or the master only; and in the instance of Berkhamstead School, which was founded by act of parliament (2 & 3 Edw. VI., reciting certain letters patent of Henry VIII.), the corporation consists of the master and usher only, of whom the master is appointed by the crown, and the usher is appointed by the master. Lands and other property of such a school are vested in the corporation, whose duty it is to apply them, pursuant to the terms of the donation, in supporting the school. Many school endowments are of a mixed nature, the funds being appropriated both

to the support of a free-school and for other charitable purposes. These other purposes are very various; but among them the union or connection of an hospital or almshouse with a free-school is one of the most common.

Where there is no charter of incorporation, which is the case in a great number of school endowments, the lands and other property of the school are vested in trustees, whose duties, as to the application of the funds, are the same as in the case of an incorporated school. It is necessary from time to time for the actual trustees to add to their numbers by such legal modes of conveyance as shall vest the school property in them and the new trustees jointly. These conveyances sometimes cause a considerable expense; and when they have been neglected, and the estates have consequently become vested in the heir-at-law of the surviving trustee, some difficulty is occasionally experienced in finding out the person in whom the school estates have thus become vested. When the school property consists of money, the same kind of difficulty arises; and money is also more liable to be lost than land.

Every charity, and schools amongst the rest, seems to be subject to visitation. We shall first speak of incorporated schools.

The founder may make the persons to whom he gives the school property on trust also the governors of his foundation for all purposes; and if he names no special visitor, it appears that such persons will be visitors as well as trustees. If he names a person as visitor, such person is called a special visitor; and it is a general rule that if the founder names no special visitor, and does not constitute the governors of his foundation the visitors, the heir-at-law of the founder will be visitor; and if there is no heir-at-law, the crown will visit by the lord keeper of the great seal. The king is visitor of all schools founded by himself or his ancestors. The duties of trustees and visitors are quite distinct, whether the same persons are trustees and visitors, or the trustees and visitors are different. It is the duty of trustees to preserve the school property, and to apply it to the purposes intended by the founder. In respect of



their trust, trustees are subject to the jurisdiction of the Court of Chancery, like all other trustees; and of course they are answerable for all misapplication of the funds. It is the visitor's duty to inquire into the behaviour of the master and usher in their respective offices, and into the general conduct of the school. He must judge according to the founder's rules, which he cannot alter unless he is empowered by the terms of the donation to do so. There seems to be no reason for supposing that the king, in respect of royal foundations, has any further power than other persons, and consequently he cannot alter the terms of the donation, unless this power was originally reserved to the founder and his successors; but on this matter there may be some difference of opinion. The visitor, or those who have visitatorial power, can alone remove a master or usher of an endowed school. The Court of Chancery never removes a master or usher, when they are part of the corporate body, on the general principle that this court has no power to remove a corporator of any kind; and when there is a visitor, or persons with visitatorial power, the Court never attempts directly to remove a master or usher, even if they are not members of the corporation. (17 Ves., *Att.-Gen. v. the Earl of Clarendon*.)

Trustees of endowed schools which are not incorporated are accountable in a court of equity for the management of the school property. But the internal management of the school still belongs to the special visitor, if there is one; and if there is no special visitor it belongs to the founder's heir. Trustees of endowed schools, simply as such, are merely the guardians of the property, as already observed; and it is their duty to take care of it, and to apply the income according to the founder's intention. It has, however, happened that in schools not incorporated the jurisdiction of the Court of Chancery and the visitatorial jurisdiction have not been kept quite distinct; and cases have arisen in which it has been found difficult to determine what ought to be the proper mode of proceeding.

A free grammar-school is an endowment for teaching the learned languages,

or Greek and Latin, and for no other purpose, unless the founder has prescribed other things to be taught besides grammar. This legal meaning of the term grammar-school has been fixed by various judicial decisions, and it appears to be established that, if the founder merely expresses his intention to found a grammar-school, the school must be a school for teaching Latin and Greek only, at least, so far as the teaching is gratuitous; other branches of instruction may be introduced, but the scholars must pay for this extra instruction. If it should happen that the endowment has, for a long time, been perverted from its proper purposes, this will not prevent the Court of Chancery from declaring a school originally designed for a grammar-school to be still a grammar-school, and it will give the proper directions for carrying into effect the founder's intentions, whatever may be the length of time during which they have been disregarded. This was the case with the grammar-school of Highgate, in the county of Middlesex, which was founded by Sir Roger Cholmeley, under letters patent of Queen Elizabeth, under the title of the Free Grammar-school of Roger Cholmeley, Knight. The statutes were made in 1571, by the wardens and governors, with the consent of the Bishop of London, under the authority of the letters patent. The first statute ordered that the schoolmaster should be a graduate, and should teach young children their A, B, C, and other English books, and to write, and also in their grammar as they should grow up thereto. An information which was filed against the governors, charged that the school had been converted from a free grammar-school into a mere charity school, and that the governors had, in other ways, abused their trust. The facts of the abuse were established, but it was shown that, so far back as living memory could go, the school had been merely a place of instruction in English, writing, and arithmetic; and also that, in other respects, the statutes had not been observed as far back as the year 1649. Notwithstanding this, it was declared by the chancellor (Eldon) that this was a school originally intended for the purpose of

teaching grammar, and a decree was made for restoring the school according to the intention of the founder. But it appears from the first statute that the school was also intended to be an English school.

As to teaching something besides Latin and Greek in an endowed school, Lord Eldon observes (*Att.-Gen. v. Hartley*, 2 J. & W., 378), "if there was an antient free grammar-school, and if at all times something more had been taught in it than merely the elements of the learned languages, that usage might engraft upon the institution a right to have a construction put upon the endowment different from what would have been put upon it if a different usage had obtained." When the founder has only intended to establish a grammar-school, and has applied all the funds to that purpose, none of them can be properly applied to any other purpose, such as teaching the modern languages or other branches of knowledge. When the funds of a school have increased so as to be more than sufficient for the objects contemplated by the founder, the Court of Chancery will direct a distribution of the increased funds, but it will still apply the funds to objects of the same kind as those for which the founder gave his property. If then a founder has given his property solely for the support of a grammar-school, it is inconsistent with his intention to apply any part of the funds to other purposes, such for instance as paying a master for teaching writing and arithmetic; and yet this has been done by the Court of Chancery in the case of Monmouth school (3 Russ., 530) and in other cases. The foundation of Monmouth school consists of an almshouse, a free grammar-school for the education of boys in the Latin tongue, and other more polite literature and erudition, and a preacher. The letters patent declared that "all issues and revenues of lands to be given and assigned for the maintenance of the almshouse, school, and preacher, should be expended in the sustentation and maintenance of the poor people of the almshouse, of the master and under-master of the school, and of the preacher, and in repairs of the lands and possessions of the charity." Not-

withstanding this, the Court of Chancery appointed a writing-master, at a salary of 60*l.* per annum, to be paid out of the issues and revenues; and thus it took away 60*l.* per annum from those to whom the founder had given it. This was done on the authority of a case in the year 1797, which was itself a bad precedent.

Lord Eldon's decision in the case of Market Bosworth school (*Att.-Gen. v. Dixie*, 3 Russ., 534) established an usher in the school, whose sole occupation was to be to instruct the scholars in English, writing, and arithmetic, and it gave the usher a salary of 90*l.* per annum out of the school funds. But in doing this Lord Eldon merely did what the donor intended. Market Bosworth is one of those grammar-schools in which the founder has directed that other things should be taught besides Latin and Greek. According to the statutes, the school was to be divided into two branches, the lower school and the upper; and "in the first form of the lower school shall be taught the A, B, C, Primer, Testament, and other English books." In the upper school the instruction was confined to Latin, Greek, and Hebrew. It is therefore in this case as clear that the founder's intention was carried into effect by the decree of the court, as it is clear that in the case of the Monmouth school such intention was violated. The case of Monmouth school, however, furnished a precedent, which has been followed in other cases.

There are many grammar-schools in which nothing is provided for or nothing intended by the founder except instruction in grammar, which, as the term was then understood, appears to have meant only the Latin and Greek languages, or sometimes only Latin perhaps. Where provision is made for other instruction in addition to, or rather as preparatory to, the grammar instruction, modes of expression like those already mentioned in the case of Highgate and Market Bosworth schools have been used by the founder or the makers of the statutes. In the founder's rules for the grammar-school of Manchester, which has now an income of above 4000*l.* per annum, it is said, "The high-master for the time being shall always appoint one of his scholars,

as he thinketh best, to instruct and teach in the one end of the school all infants that shall come there to learn their A, B, C, Primer, and sorts, till they being in grammar," &c. In all cases of grammar-schools where this instruction is to be given, it was evidently intended as a preparation for and not as a substitute for grammar. It was therefore clearly an abuse in the case of the Highgate school to have converted it into a mere school for reading, writing, and arithmetic; but it is equally an abuse in the case of the Manchester school to make the following regulation as to the admission of pupils, which was in force at the time of the Charity Commissioners' inquiry: "All boys who are able to read are admitted on application to the head master into the lower school, where they are instructed in English and the rudiments of Latin by the master of that school. They are so admitted about the age of six or seven."

Grammar-schools have now for a long time been solely regulated by the Court of Chancery, which, though affecting merely to deal with them in respect of the trusts and the application of the trust-moneys, has in fact gone much farther. The court may be applied to for the purpose of establishing a school where funds have been given for the purpose, but the object cannot be effected without the aid of the court. It may also be applied to for the purpose of correcting a misapplication of the funds. The court may also be applied to in order to sanction the application of the school funds when they have increased beyond the amount required for the purposes indicated by the founder. Such surplus funds are often applied in establishing exhibitions or annual allowances to be paid to meritorious boys who have been educated at the school, during their residence at college. The master's scheme for the regulation of Tunbridge school in Kent, which was confirmed by the Court of Chancery, established sixteen exhibitions of 100*l.* each, which are tenable at any college of Oxford or Cambridge, and payable out of the founder's endowment. It also extended the benefits of the school beyond the limits fixed by the founder, and made

various other regulations for the improvement of the school, having regard to the then annual rents of the school estates.

When the application has been an honest one, the schemes sanctioned by the Court of Chancery may generally be considered as aiming at least to carry the founder's intention into effect, and as calculated on the whole to benefit the school. But in some cases decrees have been obtained by collusion among all the parties to the suit, against which it is no security that the attorney-general is a necessary party to all bills and informations about charities. The founder of a school and hospital in one of the midland counties, among other things, appointed that "the schoolmaster should be a single person, a graduate in one of the universities of Oxford or Cambridge," &c.; and he did "further will that if any schoolmaster so to be chosen should marry or take any woman to wife, or take upon him any cure of souls, or preach any constant lecture, then in every of the said cases he should be disabled to keep or continue the said school." The trustees dispensed with these restrictions and qualifications, but afterwards finding that they could not do this, they applied to the Court of Chancery: and the court ordered, among other things, that a clergyman should be the head master, though the founder did not intend to exclude laymen; and that the head master was not to be restricted from marrying or taking upon him the cure of souls, &c. This mode of dealing with a founder's rules has not much appearance of an attempt to carry them into effect.

This clause about marrying occurs in the rules of several grammar-schools, for instance in those of Harrow school. The rule may be wise or unwise; but it was once observed, and it ought to be observed still, until it is altered by the proper authority.

It appears from the rules of many grammar-schools that religious instruction according to the principles of the Church of England, as established at the Reformation, is a part of the instruction which the founder contemplated; and when nothing is said about religious instruction, it is probable that it was always the practice to give such instruction in

grammar-schools. That it was part of the discipline of such schools before the Reformation cannot be doubted, and there is no reason why it should have ceased to be so after the Reformation, as will presently appear. It is generally asserted that in every grammar-school religious instruction ought to be given, and according to the tenets of the Church of England; and that no person can undertake the office of schoolmaster in a grammar-school without the licence of the ordinary. This latter question was argued in the case of *Rex v. the Archbishop of York*. (6 *T. R.*, 490.) A mandamus was directed to the archbishop directing him to license R. W. to teach in the grammar-school at Skipton, in the county of York. The return of the archbishop was that the licensing of schoolmasters belongs to the archbishops and bishops of England; that R. W. had refused to be examined; and he relied as well on the ancient canon law as upon the canons confirmed in 1603 by James I. (*The Constitutions and Canons Ecclesiastical*, 'Schoolmaster,' 77, 78, 79.) The return was allowed, and consequently it was determined that the ordinary has power to license all schoolmasters, and not merely masters of grammar-schools. As to schoolmasters generally, the practice is discontinued, and probably it is not always observed in the case of masters of grammar-schools.

The form of the ordinary's licence is as follows:—"We give and grant to you, A. B., in whose fidelity, learning, good conscience, moral probity, sincerity, and diligence in religion we do fully confide, our licence or faculty to perform the office of master of the grammar-school at H., in the county, &c., to which you have been duly elected, to instruct, teach, and inform boys in grammar and other useful and honest learning and knowledge in the said school allowed of and established by the laws and statutes of this realm, you having first sworn in our presence on the Holy Evangelists to renounce, oppose, and reject all and all manner of foreign jurisdiction, power, authority, and superiority, and to bear faith and true allegiance to her majesty Queen Victoria, &c., and subscribed to

the thirty-nine articles of religion of the United Church of England and Ireland and to the three articles of the thirty-sixth canon of 1603, and to all things contained in them, and having also before us subscribed a declaration of your conformity to the Liturgy of the United Church of England and Ireland as is now by law established. In testimony,' &c.

From this licence it appears that the master of every school who is licensed by the ordinary must be a member of the Church of England, and must take the oath and make the subscriptions and declarations which are recited in the licence.

It is a common notion that the master of a grammar-school must be a graduate of Oxford or Cambridge, and in holy orders: and such is the present practice. But it is by no means always the case that the rules of endowed schools require the master to be in holy orders. The founders seem generally to have considered this a matter of indifference, but many of them provided that if the master was in orders, or took orders, he should not at least enumber himself with the cure of souls. The principle clearly was, that the master of a grammar-school should devote himself solely to that work, and it was a good principle. The Court of Chancery has in various cases ordered that the master should be a clergyman, where the founder has not so ordered. Dean Colet, the founder of St. Paul's School, London, ordered by his statutes, that neither of the masters of that school, if in orders, nor the chaplain, shall have any benefice with cure or service which may hinder the business of the school. He appointed a chaplain to the school, thereby appearing to intend that the religious instruction should not be given by the masters of grammar, who would be fully employed otherwise.

It has sometimes been doubted whether a master of a grammar-school could hold ecclesiastical preferment with it. If the founder has not forbidden this, there is no rule of law which prevents him. If the holding of the two offices should cause him to neglect the duties of either, the remedy is just the same as if he neg-

lected either of his offices for any other cause.

Many grammar-schools are only free to the children of a particular parish, or of some particular parishes; but this privilege has occasionally been extended to a greater surface, as in the case of Tunbridge school. Some are free to all persons, which is the case with some of King Edward VI.'s endowments. Sometimes the number of free boys is limited, but the master is allowed to take pay scholars, either by usage or by the founder's rules. At present the practice is for masters of grammar-schools to take boarders if they choose, but in some cases the number is limited. Abuses undoubtedly have arisen from the practice of the master taking boarders, and the children of the parish or township for which the school was intended have been neglected or led to quit the school sometimes in consequence of the head master being solely intent on having a profitable boarding school. But in most cases the school has benefited by the master taking boarders; and this has frequently been the only means by which the school has been able to maintain itself as a grammar-school. When the situation has been a good one, an able master has often been found willing to take a grammar-school with a house, and a small salary attached to it, in the hope of making up a competent income by boarders. As this can only be effected by the master's care and diligence in teaching, a small neighbourhood has thus frequently enjoyed the advantage of its grammar-school, which otherwise would have been lost.

There has never been any general superintendence exercised over the endowed schools of this country. The Court of Chancery only interferes when it is applied to, and then only to a certain extent; and visitors are only appointed for particular endowments; they are also often ignorant of their powers, and they rarely exercise them. As many of these places have only small endowments, are situated in obscure parts, with the property vested in unincorporated trustees, who are ignorant of their duty, and sometimes careless about it,

we may easily conceive that these schools would be liable to suffer from fraud and neglect, both of trustees and masters; and this has been the case. The object of the statute of Elizabeth was to redress abuses in the management of charities generally; but a great many endowments for education were excepted from the operation of that statute, which indeed seems not to have had much effect, and it soon fell nearly into disuse. Applications for the redress of abuses have, from time to time, been continually making to the Court of Chancery, and Berkhamstead school has now, for a full century, been before the court. In many cases the governors of schools have obtained Acts of Parliament to enable them better to administer the funds. This was done in the case of Macclesfield school by an Act of the year 1774, and another for the same school has recently been obtained. An Act of Parliament was also obtained in 1831 for the free-school of Birmingham, the property of which had at that time increased considerably in value, and is still increasing. Both these schools were foundations of Edward VI., and were endowed with the property of suppressed religious foundations.

The condition of the endowments for education in England may now be collected from the Reports of the Commissioners for Inquiry into Charities. In 1818 commissioners were appointed under the great seal, pursuant to an Act passed in the 58th year of the reign of George III., entitled "An Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor." A great many places were excepted from the operation of this Act. The commission was continued and renewed under various Acts of Parliament, the last of which (5 & 6 Wm. IV. c. 71) was entitled "An Act for appointing Commissioners to continue the Inquiries concerning Charities in England and Wales until the 1st day of August, 1837." All the exceptions contained in the first Act were not retained in the last; but the last Act excepted the following places from inquiry: "The universities of Oxford and Cambridge, and the colleges

and halls within the same; all schools and endowments of which such universities, colleges, or halls are trustees: the colleges of Westminster, Eton, and Winchester; the Charter House; the schools of Harrow and Rugby; the Corporation of the Trinity House of Deptford Strand; cathedral and collegiate churches within England and Wales; funds applicable to the benefit of the Jews, Quakers, or Roman Catholics, and which are under the superintendence and control of persons of such persuasions respectively." Under the last Act the Commissioners completed their inquiries into endowments for education and other charities, with the exceptions above specified. The Reports of the Commissioners contain an account of the origin and endowment of each school which was open to their inquiry, and also an account of its condition at the time of the inquiry. The Reports are very bulky and voluminous, and consequently cannot be used by any person for the purpose of obtaining a general view of the state of these endowments; but for any particular endowment they may be consulted as being the best, and in many cases the only accessible sources of information.

The number of grammar-schools reported on by the Commissioners is 700; the number of endowed schools not classical, 2150; and of charities for education not attached to endowed schools, 3390. The income of grammar-schools reported on is 152,047*l.* 14*s.* 1*d.*; of endowed schools (not classical), 141,385*l.* 2*s.* 6*d.*; and of the other charities given for or applied to education, 19,112*l.* 8*s.* 8*d.*

The previous remarks on grammar-schools must be taken subject to the provisions contained in a recent Act of Parliament, which is the only attempt that has been made by the legislature to regulate schools of this class. This Act (3 & 4 Vic. c. 71) is entitled "An Act for Improving the Condition and extending the Benefits of Grammar-Schools." The Act recites, among other things, that the "patrons, visitors, and governors of such grammar-schools are generally unable of their own authority to establish any other system of education than is expressly provided for by the foundation, and her majesty's courts of law and

equity are frequently unable to give adequate relief, and in no case but at considerable expense." The Act then declares that the courts of equity shall have power, as in the Act provided, "to make such decrees or orders as to the said courts shall seem expedient, as well for extending the system of education to other useful branches of literature and science, in addition to or (subject to the provisions hereinafter contained) in lieu of the Greek and Latin languages, or such other instruction as may be required by the terms of the foundation or the then existing statutes, as also for extending or restricting the freedom or the right of admission to such school, by determining the number or the qualifications of boys who may thereafter be admissible thereto as free scholars or otherwise, and for settling the terms of admission to and continuance in the same, and to establish such schemes for the application of the revenues of any such schools as may in the opinion of the court be conducive to the rendering or maintaining such schools in the greatest degree efficient and useful, with due regard to the intentions of the respective founders and benefactors, and to declare at what period, and upon what event, such decrees or orders, or any directions contained therein, shall be brought into operation; and that such decrees and orders shall have force and effect, notwithstanding any provisions contained in the instruments of foundation, endowment, or benefaction, or in the then existing statutes;" but it is provided, that if there shall be any special visitor appointed by the founder or other competent authority, he shall be heard on the matters in question before the court makes any orders or decrees.

This enactment extends the power of the court over grammar-schools very considerably, as will appear from what has been said; not so much however, if we view what the court has done, as it we take the declarations of the most eminent equity judges as to what the court can do. The power however of changing a grammar-school into one not a grammar-school, which is given by this Act, is a considerable extension of authority

but the power is limited to cases (§ 3) where the necessity of such a change arises from insufficiency of the revenues of a grammar-school for the purpose of such school. But this provision, as it has properly been remarked, will be of very difficult application; for in many successful grammar-schools the revenue is small, and in some which are not successful it is large. Smallness of revenue, therefore, will not of itself prove "insufficiency of revenues" in the sense intended by the Act. The same section contains also a provision, that except in this case of insufficient revenues, the court shall not by this Act be authorised to dispense with any statute or provision now existing, so far as relates to the qualification of any schoolmaster or under-master. The dispensing power then which the court has often assumed, as shown in some instances above mentioned, remains as it was; that is, it does not exist at all.

When a grammar-school shall have been made into another kind of school under the provisions of this Act, it is still to be considered a grammar-school, and subject to the jurisdiction of the ordinary as heretofore.

In case there shall be in any city, town, or place, any grammar-school or grammar-schools with insufficient revenues, they may be united, with the consent of the visitor, patron, and governor of every school to be effected thereby. The legal meaning of city and town (township) is sufficiently precise, but "place" has no legal meaning, and the framers of the Act have forgotten to give it one in their 25th section, which treats of the construction of terms in that Act.

The court is also empowered (§ 14) to enlarge the powers of those who have "authority by way of visitation or otherwise in respect of the discipline of any grammar-school;" and where no authority by way of visitation is vested in any known person, the bishop of the diocese may apply to the Court of Chancery, stating the facts, and the court may, if it so think fit, give the bishop liberty to visit and regulate the said school in respect of the discipline, but not otherwise. This provision, for various reasons, will prove completely inoperative.

The Act gives a summary remedy against masters who hold the premises of any grammar-school after dismissal, or after ceasing to be masters. Such masters are to be turned out in like manner as is provided in the case of other persons holding over, by the Act of the first and second of Victoria, entitled "An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy."

All applications to the court under this Act may be (not *must*) made by petition only, and such petitions are to be presented, heard, and determined according to the provisions of the 52 Geo. III. c. 101.

The Act saves the rights of the ordinary. It is also declared not to extend "to the universities of Oxford or Cambridge, or to any college or hall within the same, or to the university of London, or any colleges connected therewith, or to the university of Durham, or to the colleges of St. David's or St. Bees, or the grammar-schools of Westminster, Eton, Winchester, Harrow, Charter-House, Rugby, Merchant Tailors', St. Paul's, Christ's Hospital, Birmingham, Manchester, or Macclesfield, or Lowth, or such schools as form part of any cathedral or collegiate church." But the exemption does not extend to the grammar-schools of which the universities of Oxford or Cambridge, or the colleges and halls within the same, are trustees, though these schools were excepted from the Commissioners' inquiry by the 5 & 6 Wm. IV. c. 71.

Endowments for Education are probably nearly as old as endowments for the support of the church. Before the Reformation there were schools connected with many religious foundations, and there were also many private endowments for education. Perhaps one of the oldest schools of which anything is known is the school of Canterbury. Theodore, who was consecrated archbishop of Canterbury in 668 (according to some authorities), founded a school or college by licence from the pope. This school certainly existed for a long time; and there is a record of a suit before the Archbishop of Canterbury in 1321, between the rector

of the grammar-schools of the city (supposed to be Theodore's school or its representative) and the rector of St. Martin's, who kept a school in right of the church. The object of the suit was to limit the rector of St. Martin's to the number of his scholars. This school probably existed till the Reformation, at least this is the time when the present King's school of Canterbury was established by Henry VIII., and probably on the ruins of the old school. Before the Reformation schools were also connected with chantries, and it was the duty of the priest to teach the children grammar and singing. There are still various indications of this connection between schools and religious foundations in the fact that some schools are still, or were till lately, kept in the church, or in a building which was part of it. There are many schools still in existence which were founded before the Reformation, but a very great number were founded immediately after that event, and one professed object of king Edward VI. in dissolving the chantries and other religious foundations then existing was for the purpose of establishing grammar-schools, as appears from the recital of the Act for that purpose (1 Ed. VI. c. 14). [CHANTRY.]

Though the Act was much abused, the king did found a considerable number of schools, now commonly called King Edward's Schools, out of tithes that formerly belonged to religious houses or chantry lands; and many of these schools, owing to the improved value of their property, are now among the richest foundations of the kind in England. In these, as in many other grammar-schools, a certain number of persons were incorporated as trustees and governors, and provision was made for a master and usher. At that time the endowments varied in annual value from twenty to thirty and forty pounds per annum.

A large proportion of the grammar-schools were founded in the reigns of Edward VI. and Elizabeth, and there is no doubt that the desire to give complete ascendancy to the tenets of the Reformed Church was a motive which weighed strongly with many of the founders. Since the reign of Elizabeth we find

grammar-schools occasionally established, but less frequently, while endowments for schools not grammar-schools have gradually increased so as to be much more numerous than the old schools. Foundations of the latter kind are still made by the bounty of individuals from time to time; and a recent Act of Parliament (2 & 3 Wm. IV. c. 115) has made it lawful to give money by will for the establishing of Roman Catholic schools. The statute of the 9th Geo. II. c. 36, commonly called the Mortmain Act, has placed certain restrictions on gifts by will for *charitable* purposes, which restrictions consequently extend to donations by will for the establishment or support of schools. [MORTMAIN.]

The history of our grammar-schools before the Reformation would be a large part of the history of education in England, for up to that time there were probably no other schools. From the time of the Reformation, and particularly till within the last half-century, the grammar-schools of England were the chief places of early instruction for all those who received a liberal training. From these often humble and unpretending edifices has issued a series of names illustrious in the annals of their country—a succession of men, often of obscure parentage and stunted means, who have justified the wisdom of the founders of grammar-schools in providing education for those who would otherwise have been without it, and thus securing to the state the services of the best of her children. Though circumstances are now greatly changed, there is nothing in the present condition of the country which renders it prudent to alter the foundation of these schools to any great extent; and certainly there is every reason for supporting them in all the integrity of their revenues, and for labouring to make them as efficient as their means will allow. In the conflict of parties who are disputing about education, but in fact rather contending for other things—in the competition of private schools, which from their nature must be conducted by the proprietor with a view to a temporary purpose—and in the attempt made to form proprietary establishments which shall com-



bine the advantages of grammar-schools and private schools, and shall not labour under the defects of either—we see no certain elements on which to rest our hopes of a sound education being secured to the youth of the middle and upper classes of this country. The old grammar-schools, on the whole, possess a better organization than anything that has yet been attempted, and though circumstances demand changes in many of them, they require no changes which shall essentially alter their character. In the present state of affairs, these are specially the schools for the middle classes who belong to the Established Church, and it is their interest to cherish and support them.

Digests of the whole body of Reports made by the Commissioners for Inquiry into Charities have been prepared and presented to both Houses of Parliament (1842). Two of these volumes, folios of 825 pages and 829 pages respectively, called an Analytical Digest, are arranged according to the alphabetical order of every county in England, in North Wales, and in South Wales; and under the head of every city and parish in each county are given the following particulars (the cities and parishes are arranged in alphabetical order):—The name of the charity or donor; for what purpose each charity is applicable; the quantity of land and number of houses; the rent paid for the same; the amount of unimprovable rents and rent-charges, with the amount of land-tax, if any, deducted therefrom; the amount of personal property, distinguishing money in the funds, on mortgage, or on personal or other security, or to be applied by way of loan, with or without interest; the total income of each charity; and a column of observations.

The first volume of the Analytical Digest contains a reference to the volume and page of each Report.

Such ecclesiastical presentations as are mentioned in the Reports are noticed in the Digest at the end of each county. The Digest concludes with a similar statement of those which are reported on by the Commissioners under the head of General Charities.

The second part of the Return (a folio

of 691 pages) contains a more particular Digest of all schools and charities for Education. It is divided into three parts: the first relating to Grammar schools, viz., in which Greek or Latin is required to be, or is in fact, taught; secondly, Schools not Classical; and thirdly, Charities for Education not attached to Endowed Schools, which include donations for the support of Sunday-schools.

A good deal has been written on the subject of endowments for education from time to time. There are several articles on endowed schools in the 'Journal of Education,' and an article on endowments in England for the purposes of Education, in the second volume of the publications of the Central Society of Education, by George Long. The evidence before the select committee of the House of Commons in 1835, contains much valuable information. In 1840 a sensible pamphlet on grammar-schools appeared in the form of a letter to Sir R. H. Inglis, by the Honourable Daniel Finch, for twenty years a charity commissioner. We are indebted to this letter for several facts and suggestions.

SCIRE FACIAS, a writ sued out for the purpose either of enforcing the execution of, or of vacating, some already existing record. It directs the sheriff to give notice ("Scire facias," whence the name) to the party against whom it is obtained to appear and show cause why the purpose of it shall not be effected. A summons to this effect should be served on the party, whose duty then is to enter an appearance, after which a declaration is delivered to him, reciting the writ or scire facias. To this he may plead, or demur, and the subsequent proceedings are analogous to, and in fact are in law considered as an action. If the party cannot be summoned, or fail to appear, judgment may be signed against him. The proceedings under a scire facias are resorted to in a variety of cases. They may be divided into—

1. Those where, the parties remaining the same, a scire facias is necessary to revive or set in operation the record.
2. Those where another party seeks to take the benefit of it, or becomes chargeable, or is injured, by it.

In cases where a year and a day have elapsed since judgment has been signed, and nothing (such as a writ of error, an injunction, &c.) has existed to stay further proceedings, it is a legal presumption that the judgment has either been executed, or that the plaintiff has released the execution. In such case execution cannot issue against the defendant until he has had an opportunity, by means of the notice given him under a scire facias, of appearing and showing any cause which may exist why execution should not issue against him. If the judgment has been signed more than ten years, a scire facias cannot issue unless with the permission of the court or a judge; and by the statute 3 & 4 Wm. IV. c. 27, § 49, proceedings appear to be limited to a period of twenty years. When a plaintiff, having had execution by elegit, under which he obtains possession of a moiety of the rents and profits of the defendant's land, has had the debt satisfied by payment or from the profits of the land, scire facias may be brought to recover the land.

3. The cases of more ordinary occurrence under the second head are those where one of the parties to an action becomes bankrupt, or insolvent, or dies, or, being a female, marries, or where it is sought to enforce the rights of a plaintiff against the bail to an action, or to set aside letters patent. If a woman obtain a judgment, and marry before execution, the husband and wife must sue out a scire facias to have execution. And if judgment is obtained against a woman, and she marries before execution, a scire facias must be brought against her and her husband before execution can be obtained. A scire facias is the only proceeding for the purpose of repealing letters patent by which the king has made a grant injurious to some party, as where he has granted the same thing which he had already granted to another person; or a new market or fair is granted to the prejudice of an antient one, &c. The king may have a scire facias to repeal his own grant, and any subject who is injured by it may petition the king to use his name for its repeal. A man may have a scire facias to recover the money

from a sheriff who has levied under a fieri facias and retains the proceeds.

(2 Wms. Saund. 71; Tidd's *Practice*, Archbold's *Practice*.)

SCOTCH CHURCH. [GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND.]

SCUTAGE, or ESCUAGE. [FEUDAL SYSTEM, p. 24.]

SEARCH, RIGHT OF. The general principles upon which that part of the Law of Nations is constructed which respects the usages to be observed towards neutral powers in time of war by the belligerent powers, have been explained under the head of BLOCKADE. Here it is only necessary further to remark that manifestly no other right can be exercised by the belligerent over the ships of the neutral without the right of visitation and search. The existence of that right, accordingly, is admitted on all hands as the rule, whatever may be the limitations or exceptions. As Lord Stowell has said in his judgment on the case of the *Maria* (Garrels v. Kensington, 8 T. R. 230), "Till they are visited and searched, it does not appear what the ships, or the cargoes, or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists."

In the exercise of the right of search upon a neutral vessel, the first and principal object of inquiry is generally the ship's papers. These are, the passport from the neutral state to the captain or master; the sea letter, or sea brief, specifying the nature and quantity of the cargo; the proofs of property; the muster-roll of the crew, containing the name, age, rank or quality, place of residence, and place of birth of each of the ship's company; the charter party; the bill of lading; the invoices; the log-book; and the bill of health. (Chitty on the *Law of Nations*, pp. 196-199.)

The penalty for the violent contravention of the right of visitation and search, is the confiscation of the ship and cargo; and a rescue by the crew after the captors are in actual possession is considered as the same thing with a forcible prevention. In either case the resisting ship may be seized in the same manner as if it be-

longed to the enemy, and, being brought into port, will be condemned as prize.

Of course, any of the belligerent powers may agree with any of the neutral states that the right of search shall only be exercised in certain circumstances; and this is the first limitation that falls to be noticed. "Two sovereigns," Lord Stowell has said in the same judgment, "may unquestionably agree, if they think fit, as in some late instances they have agreed, by special covenant, that the presence of one of their armed ships along with their merchant-ships shall be mutually understood to imply that nothing is to be found in that convoy of merchants' ships inconsistent with amity or neutrality; and, if they consent to accept this pledge, no third party has a right to quarrel with it, any more than with any other pledge which they may agree mutually to accept. But surely no sovereign can legally compel the acceptance of such a security by mere force. The only security known to the Law of Nations upon this subject, independent of all special covenant, is the right of personal visitation and search, to be exercised by those who have the interest in making it." Lord Stowell here alludes to the pretensions of the northern powers in their convention for the establishment of what was called an armed neutrality in 1800, one of the clauses of which was, "That the declaration of the officers who shall command the ship of war, or ships of war, of the king or emperor, which shall be convoying one or more merchant-ships, that the convoy has no contraband goods on board shall be sufficient; and that no search of his ship, or the other ships of the convoy, shall be permitted." It is sometimes stated that this was also one of the principles of the previous convention of the same kind formed by the northern powers in 1780; and there may perhaps have been an understanding among the contracting parties to that effect; but we do not find it distinctly avowed in any of their published announcements. The position in question, namely, that the presence of a ship of war should protect from search the merchantmen under its convoy, never has been admitted by Great Britain.

But it is now universally admitted that

the right of visitation and search cannot be exercised upon a ship of war, or public or national vessel, itself; and this is the second limitation of the right. It is strange that there should ever have been any doubt or dispute upon this point. A ship of war has always been looked upon as in a manner part of the national territory, and as such inviolable in any circumstances whatever; the act of entering it in search either of contraband goods or of deserters must be considered as an act of the same character with that of pursuing a smuggler or fugitive across the frontier of the state without permission of the sovereign authority, a thing the right of doing which has never been claimed. Accordingly, although it has been a common thing for nations to declare by express stipulation in their treaties with one another that the prize courts in each shall exercise a jurisdiction according to the recognised principles of public law in questions arising with regard to captures at sea, the language used has always implied that the captures are to be merchant or private vessels: of the concession by one power to another of the right of adjudicating upon its ships of war detained or brought into port not a trace is to be found in any such treaty. Yet an opposite doctrine has been both maintained in argument, and attempted to be carried into effect. In 1653, when, after the disasters of the war with England that had broken out in the preceding year, the Dutch were reduced to such a state as to make them anxious for peace upon almost any terms, the English government demanded as one of the stipulations of the proposed treaty that all Dutch vessels, both of war and others, should submit to be visited, if thereto required. But, humbled as the Dutch were, they peremptorily refused to agree to any such stipulation; and the treaty was concluded in 1654 without it. Very soon after this peace, the States General were again led to take the whole subject of the visitation and search of ships at sea into their consideration by the circumstance of one of their men-of-war, convoying a fleet of merchant ships, having been met by an English man-of-war in the Downs, when the merchant-

men were subjected to search. The first question that arose was, whether even such an exercise of the right of search was legal in the presence of the convoy; and upon this question the States determined that "the refusal to let merchantmen be searched could not be persisted in." At the same time, however, they took occasion to make the following declaration:—"That, in conformity with their High Mightinesses' instructions taken in respect to the searching of ships of war, and especially those of September, 1627, November, 1648, and December, 1649, it is thought good, and resolved, that all captains and other sea officers that are in the service of this state, or cruising on commission, shall be anew strictly commanded, told, and charged that they shall not condescend to no commands of any foreigners at sea, much less obey the same; neither shall they any ways permit that they be searched; nor deliver, nor suffer to be taken out of their ships, any people or other things." From this time for more than a century and a half, the principle of the immunity of ships of war from visitation and search was acquiesced in by the practice of our own and of every other country, nor is it known to have been contested even in speculation. But at length, in the course of the controversy that arose respecting the rights of neutrals out of the Berlin and Milan decrees of the French emperor and our own Orders in Council, in 1806 and 1807 [BLOCKADE], while some extreme partisans on the one side contended that even merchant ships were not liable to search when under the convoy of a man-of-war, others on the opposite side revived the old pretension of the English republican government of 1653, and maintained our right of visiting and searching the ships of war themselves of neutral states whenever we should think proper. The practical application of the principle that was now especially called for was the visitation of the ships of war of the United States of America for the purpose of recovering seamen alleged to be subjects of this country and deserters from the British service. The pretension thus set up was ably discussed, and its unwarrantable character clearly demon-

strated, in an article published in the 'Edinburgh Review' for October, 1807, pp. 9-22; but before this paper appeared an actual enforcement of the new doctrine had occurred in an attack made, on the 23rd of June, by the British ship of war, *Leopard*, upon the American frigate *Chesapeake*, lying off the Capes of Virginia. On the refusal of the American captain to permit his ship to be visited, the *Leopard* fired into the *Chesapeake*, which, being unprepared for action, immediately struck her flag. Four men were carried off, and the American ship was then left. A late American writer has, not in too strong language, described this act as "an exertion of power which was beyond all patient endurance, and which electrified the nation to its remotest extremities" (Tucker's *Life of Jefferson*, ii. 258). President Jefferson immediately issued a proclamation interdicting all armed British vessels from the harbours and waters of the United States, and forbidding all supplies to them, and all intercourse with them. The American minister in London was also directed to demand satisfaction of the British government. The conduct of the captain of the *Leopard* was not attempted to be defended by the ministry here; on the contrary, its illegality was at once admitted, at least by implication; but Mr. Canning, then Secretary of State for Foreign Affairs, insisted that, inasmuch as the United States had taken measures of retaliation into their own hands, Great Britain might take those measures into account in the estimate of reparation; and he inquired whether the President's proclamation would be withdrawn on the king disavowing the act of Captain Humphreys of the *Leopard*, and of Admiral Berkeley, his commanding officer, who had directed it. The proclamation was justified by the American government as a measure of precaution, and not of retaliation. Negotiations were continued for a long time without any result; the affair of the *Chesapeake* soon became mixed and complicated with other incidents, giving rise to new claims and counterclaims; at last the American government took its stand on new ground, objecting to the search not only of ships

of war but even of merchant vessels for deserters; it was not denied that the search of merchantmen was sanctioned by the law of nations, but the exercise of the right was denounced as necessarily irritating and fraught with danger, and it was urged that it should on that account be dispensed with and abolished. In the end war broke out between the two countries in the summer of 1812; but even that did not settle any of the questions that had arisen between them in connection with the right of search. The treaty of peace signed at Ghent on the 24th of December, 1814, contained no stipulation on that subject, which was now supposed to have lost its practical importance for the present by the cessation of the general war which had occasioned all the late difficulties respecting the treatment of neutral states.

The right of visitation and search, however, is by no means necessarily confined to a time of war. Its exercise has always been admitted to be equally allowed by international law in time of peace, though it may not commonly have then been so frequently thought to be called for. The very question of the seizure by one country of its subjects serving in the mercantile navy of another, which was one of the main subjects of dispute between England and America before the breaking out of actual hostilities in 1812, may arise in a time of peace as well as in a time of war, though its importance no doubt is less in the former than in the latter. The chief questions connected with the right of search, the number of which is greatly reduced in a time of general peace, are those relating to the trading rights of neutrals; but even of these some remain. Of late years, however, the right of search has become principally important in reference to the trade in slaves, which has now been declared to be illegal by most of the great maritime states. The right of visitation and search, however its exercise may be regulated, seems to afford the only means of ascertaining whether or no a vessel has got slaves on board; but it is evident that any power opposed, for whatever reason, to the exercise of that right may, even while declaring the slave trade to be

illegal, refuse to allow that illegality to be made an excuse for the visitation of suspected ships bearing its flag. It is only by express stipulation that the free exercise of the right can be established. England, which has all along been foremost in the attempt to suppress the slave trade, has never objected to the exercise of the right of search for this, or indeed for any other legitimate object; but other nations, jealous of our predominant maritime power, have, not perhaps very unnaturally, been extremely reluctant to concede it in this particular case. Some further remarks on this subject are briefly made under the article SLAVE, SLAVERY, farther on in this work.

SEARCHERS. [BILLS OF MORTALITY.]

SEAWORTHINESS. [SHIPS.]

SECRETARY (French, *Secrétaire*), one entrusted with the secrets of his office or employer; one who writes for another. Its remote origin is the Latin *secretum*. The phrase "notarius secretorum" is applied by Vopiscus (*Div. Aurelianus*, c. 36) to one of the secretaries of the emperor Aurelian. This appellation was of very early use in England: Archbishop Becket, in the reign of Henry II., had his "secretarius;" although the person who conducted the king's correspondence, till the middle of the 13th century, was called his clerk only, probably from the office being held by an ecclesiastic. The first time the title of "secretarius noster" occurs is in the 37th Hen. III., 1253.

SECRETARY OF STATE. The office of secretary of state is one of very ancient date, and the person who fills it has been called variously "the king's chief secretary," "principal secretary," and, after the Restoration, "principal secretary of state." He was in fact the king's private secretary, and had custody of the king's signet. The duties of the office were originally performed by a single person, who had the aid of four clerks. The statute 27 Hen. VIII. c. 11, which regulates the fees to be taken by "the king's clerks of his grace's signet and privy seal," directs that all grants to be passed under any of his majesty's seals shall, before they are so sealed, be brought

and delivered to the king's principal secretary or to one of the clerks of the signet. The division of the office between two persons is said to have occurred at the end of the reign of Henry VIII., but it is probable that the two secretaries were not until long afterwards of equal rank. Thus we find Sir Francis Walsingham, in the time of Queen Elizabeth, addressed as her majesty's principal secretary of state, although Dr. Thomas Wilson was his colleague in the office. Clarendon, when describing the chief ministers at the beginning of the reign of Charles I., mentions the two secretaries of state, "who were not in those days officers of that magnitude they have been since; being only to make dispatches upon the conclusion of councils, not to govern or preside in those councils." Nevertheless the principal secretary of state must, by his immediate and constant access to the king, have been always a person of great influence in the state. The statute 31 Hen. VIII. c. 10, gives the king's chief secretary, if he is a baron or a bishop, place above all peers of the same degree; and it enacts that if he is not a peer he shall have a seat reserved for him on the woolsack in parliament; and in the Star Chamber and other conferences of the council, that he shall be placed next to the ten great officers of state named in the statute. He probably was always a member of the privy council. Lord Camden, in his judgment in the case of *Entick v. Carrington* (11 Hargrave's *State Trials*, p. 317), attributes the growth of the secretary of state's importance to his intercourse with ambassadors and the management of all the foreign correspondence of the state, after the policy of having resident ministers in foreign courts was established in Europe. Lord Camden, indeed, denies that he was antiently a privy counsellor.

The number of secretaries of state seems to have varied from time to time: in the reign of George III. there were often only two; but of late years there have been three principal secretaries of state, whose duties are divided into three departments—home affairs, foreign affairs, and the colonies. They are always made members of the privy council and the

cabinet. They are appointed (without patent) by mere delivery to them of the seals of office by the king. Each is capable of performing the duties of all the three departments, and the offices are so far considered as one, that upon being removed from one secretaryship of state to another, a member of the House of Commons does not vacate his seat.

To the Secretary of State for the Home department belongs the maintenance of the peace within the kingdom, and the administration of justice so far as the royal prerogative is involved in it. All patents, charters of incorporation, commissions of the peace and of inquiry, pass through his office. He superintends the administration of affairs in Ireland.

The Secretary for Foreign affairs conducts the correspondence with foreign states, and negotiates treaties with them, either through British ministers resident there, or personally with foreign ministers at this court. He recommends to the crown ambassadors, ministers, and consuls to represent Great Britain abroad, and countersigns their warrants.

The Secretary for the Colonial department performs for the colonies the same functions that the secretary for the home department performs for Great Britain.

Each Secretary of State is assisted by two under-secretaries of state, nominated by himself; one of whom is usually permanent, and the other is dependent upon the administration then in power. There is likewise in each department a large establishment of clerks appointed by the principal secretary.

The power to commit persons on suspicion of treason is incident to the office of principal secretary of state—a power which, though long exercised, has been often disputed. It is not necessary here to give the arguments on both sides; they are discussed with great care by Lord Camden in the case above cited (*Entick v. Carrington*), which was one of the numerous judicial inquiries arising out of the dispute between the Crown and John Wilks at the beginning of the reign of George III. The conclusions to which Lord Camden comes are—that the secretary of state is not a magistrate known to the common law; that the power of com-

mitment for state offences, which he has for many ages exercised, was used by him as an immediate delegation from the person of the king, a fact which may be inferred, among other things, from the debates in parliament in the time of Charles I., when Secretary Cook claimed the power on that ground; that nevertheless courts of justice must recognise this power, inasmuch as there has been constant usage of it, supported by three judicial decisions in favour of it since the Revolution, viz., by Lord Holt, in 1695 (*Rex v. Kendal and Rowe*); by Chief Justice Parker, in 1711 (*Queen v. Derby*); and by Lord Hardwicke, in 1734 (*Rex v. Earbury*). In a more recent case (*King v. Despard*, 1798), Lord Kenyon says, "I have no difficulty in saying that the secretaries of state have the right to commit;" and he hints that Lord Camden felt too much doubt on the subject. The secretary of state has also power to issue a warrant by which he may direct letters to be opened which are sent through the post-office. This power is occasionally exercised, and was the subject of much discussion in parliament in 1845.

There is also a chief secretary for Ireland, resident in Dublin (except when parliament is sitting), and he has always an under-secretary there. He corresponds with the home department, and is under the authority of the lord-lieutenant of Ireland. His office is called that of secretary to the lord-lieutenant; but it is analogous to the office of secretary of state. He has sometimes, though very rarely, been a member of the cabinet.

**SEDITION** (from the Latin *seditio*). It is stated that in many of the old English common law writers treason is sometimes expressed by the term Sedition; and that when law proceedings were in Latin, *seditio* was the technical word used in indictments for treason, till it was superseded by the word *proditio*.

Sedition does not appear to be very exactly defined. It is stated to comprehend contemptuous, indecent, or malicious observations upon the king or his government, whether made in words only, or in writing, or by tokens (which last term must comprehend pictures or drawings), calculated to lower him in the

opinion of the subjects or to weaken his government. All these offences fall short of treason; but they are considered crimes at common law, and punishable by fine and imprisonment.

There are also statutes against particular acts of sedition, such as seditious libels. [LAW, CRIMINAL, p. 210, No. 40.]

There are also various acts against societies established for seditious and treasonable purposes, and against seditious meetings and assemblies.

The Roman sense of *Seditio* (*sed* or *se*, and *itio*, a going apart, a separation) is properly a disunion among the citizens, a riot, or turbulent assemblage of people for the purpose of accomplishing some object by violence or causing fear. It was included among other forbidden acts in the *Lex Julia de Majestate*. (Dig. 48, tit. 4.) It is often used in connection with "tumultus" and "turba;" and the three terms seem to have the same signification. (Rein, *Römische Criminalrecht*, p. 522.)

**SEDUCTION.** [PARENT AND CHILD.]

**SEIGNORAGE.** [MONEY, p. 350.]

**SEIGNORY.** [TENURE.]

**SEISIN** is a term properly applied to estates of freehold only, so that a man is said to be *seised* of an estate of inheritance or for life, and to be *possessed* of a chattel interest, such as a term of years. This distinction does not appear to have existed in the time of Bracton; at least he uses the two words as identical in meaning ('*possessio sive seisin multiplex est*,' lib ii., fol. 38).

The seisin of the tenant of a freehold is the legal possession of the land. It is actual seisin, called seisin in deed, when he has corporeal possession of the land, or, as Bracton expresses it, '*corporalis rei detentio: corporis et animi cum iuris adminiculo concurrente*.' It is seisin in law when lands have descended to a person, but he has not yet actually entered into possession of them, and no person has usurped the possession. When an estate of inheritance is divided into several estates, as for instance an estate for life, and a remainder or reversion in fee, the tenant in possession has the actual seisin of the lands; but the persons in remainder or reversion have also

seisin of their respective estates. The seisin of a rent which issues out of lands is quite distinct from the seisin of the lands; and therefore a disseisin of the estate in the land is not a disseisin of the rent.

In the conveyance of land by feoffment, the delivery of the possession, or livery of seisin, as it is termed, is the efficient part of the conveyance. [FEOFFMENT.]

The word seisin is also applied to the services due from the tenant to the lord. When the lord has received the tenant's oath of fealty, he has obtained seisin of all his services.

Seisin in deed is obtained by actually entering into lands, and an entry into part in the name of the whole is sufficient; by the receipt of rents or profits; and by the actual entry of a lessee to whom the lands are demised by a person who is entitled to but has not obtained actual possession.

Seisin may also be acquired under the Statute of Uses, 27 Hen. VIII., which enacts that when any person shall be seised of any lands to the use, &c. of another, by reason of any bargain, sale, feoffment, &c., the person having the use, &c. shall thenceforth have the lawful seisin, &c. of the lands in the same quality, manner, and form as he had before in the use.

A disseisin supposes a prior seisin in another, and a seisin by the disseisor which terminates such prior seisin. To constitute a disseisin, it was necessary that the disseisor should not have a right of entry; that the disseisee should not voluntarily give up his seisin, and that the disseisor should make himself the tenant of the land; or in other words, should put himself, with respect to the lord, in the same situation as the person disseised. "But," it is well remarked (Co. Litt., 266 *b*, Butler's note), "how this substitution was effected, it is difficult, perhaps impossible, now to discover. From what we know of the feudal law, it does not appear how a disseisin could be effected without the consent or connivance of the lord; yet we find that the relationship of lord and tenant remained after the disseisin. Thus after the disseisin the lord might release the rent and services to the disseisee; might avow upon him; and if he died, his heir within age, the lord was entitled

to the wardship of the heir." But the doctrine of disseisin is in many respects very obscure, and at present of little practical importance.

#### SEPARATION A MENSA ET THORO. [DIVORCE.]

SEPOY, or SIPOY, the name of the native soldier in the East Indies. Bishop Heber derives the word from "sip," the bow and arrow, which were originally in almost universal use by the native soldiers of India in offensive warfare. Those Bheels and Kholes who are employed in Guzerat in the service of the police and in protecting gentlemen's houses and gardens are also called sepoy, and with more propriety, as they still use the bow and arrow. The native soldiers in the pay of the British government now form a large army, well trained in European discipline: the men are of a size somewhat below that of European soldiers, but they are quite as brave, as hardy, and as active, capable of undergoing as much fatigue and of sustaining even greater privations. To the attachment and bravery of this army Great Britain is chiefly indebted for the possession of her Indian empire, and it now secures to her the sovereignty over a territory vastly more extensive than her own, and separated from her by the distance of nearly half the globe.

The pay of the Sepoy is two pagodas, or seven rupees, per month, which is double the wages of the class of persons from whom they are generally drawn.

The Indian army in 1840, according to the 'East India Calendar,' was as follows:—

#### *Bombay.*

- 26 regiments of native infantry.
- 3 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of artillery.
- 1 corps of engineers.
- 1 corps of invalids.

#### *Madras.*

- 52 regiments of native infantry.
- 8 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of horse artillery.
- 4 regiments of foot artillery.
- 1 corps of engineers.
- 1 corps of invalids.



*Bengal.*

- 74 regiments of native infantry.
- 10 regiments of native cavalry.
- 2 regiments of European infantry.
- 1 regiment of horse artillery.
- 5 battalions of foot artillery.
- 1 corps of engineers.
- 1 corps of invalids.

Each regiment consists of two battalions of 500 men each. In 1842 the number of native soldiers in the pay of the East India Company was 181,612, besides 4450 native officers, in all 186,062. The number of European soldiers was 19,164, besides 5531 European officers, in all 24,695. The entire Indian army in 1842 consequently amounted to 210,757.

SEQUESTRATION. [BENEFICE, p. 347.]

SEQUESTRATION. [BANKRUPT (SCOTLAND), p. 296.]

SERJEANT, or SERGEANT, is a non-commissioned officer in a troop of cavalry or in a company of infantry. The duties of serjeants are to drill or instruct in discipline the recruits of a regiment; and on parade they act as markers or guides in the performance of the evolutions. The serjeants of infantry are now armed with muskets like the rest of the troops. In each company, when a battalion is in line, a covering serjeant is always stationed behind the officer commanding the company; when the ranks take open order, and that officer advances before the front rank, the serjeant steps into his place; but upon the ranks being closed, he falls again to the rear. Four or six serjeants are charged with the important duty of guarding the colours of the regiment: they constantly attend the officers who carry them, and are called colour-serjeants. One serjeant in each troop or company is appointed to pay the men; also to keep the accounts relating to their allowances, the state of their necessities, &c.

The name of *sergens* or *servientes* was, in the armies of France during the reign of Philip Augustus, applied to gentlemen who served on horseback, but were below the rank of knights; and also, as a general term, to the infantry soldiers who were furnished by the towns.

In the reign of Philip and Mary the

serjeant-major of the army was an officer whose post corresponded to that of the modern major-general; and the serjeant-major of a regiment was a field-officer, who would now be designated the major. At present the serjeant-major is an assistant to the adjutant, and keeps the roster for the duties of the serjeants, corporals, and privates. The quartermaster-serjeant is one who acts immediately under the quartermaster of a regiment in all the details relating to the quarters of the officers and men, the supplies of food, clothing, &c.

SERJEANT, or SERGEANT. The word "serjeant" comes to us from "sergent," into which the French had modified the Latin "*serviens*." The word serjeanty, in French "*sergenterie*," was formed from "sergent," but was always used with reference to a particular species of service.

In the creation of serjeants, some ancient practices are still retained in those cases where the writ of the serjeant elect issues in term-time; but by statute 6 Geo. IV. c. 95, barristers who receive writs issued in vacation commanding them to appear in the Court of Chancery, and to take upon themselves the estate and dignity of a serjeant-at-law, are, upon appearing before the lord chancellor and taking the oaths usually administered to persons called to that degree and office, declared to be serjeants-at-law sworn, without any further ceremony.

Serjeants at law, until 1846, were the only advocates recognized in the Common Pleas, in which court they retained the right of exclusive audience. This privilege extended to trials at bar, not to trials at nisi prius, either at the assizes or at the sittings in London.

The serjeants formerly occupied three inns, or collegiate buildings, for practice, and for occasional residence, situate in Chancery Lane, Fleet Street, and Holborn. They have now no other building than Serjeants' Inn, Chancery Lane, which has been lately rebuilt. Here all the common-law judges have chambers, in which they dispose in a summary way, and with closed doors, of such matters as the legislature has expressly entrusted to a single judge, and of all business which

is not thought of sufficient magnitude to be brought before more than one judge, or which is supposed to be of a nature too urgent to admit of postponement.

The inn contains, besides accommodations for the judges, chambers for fourteen serjeants, the junior serjeants, while waiting for a vacancy, being dispersed in the different inns of courts.

In Serjeants' Inn Hall the judges and serjeants, as members of the Society of Serjeants' Inn, dine together during term-time. Out of term the hall is or was frequently used as a place for holding the revenue sittings of the court of Exchequer.

A full account of the various kinds of serjeants and of the origin of their functions is given in Manning's '*Serviens ad Legem*.' [BARRISTER.] See also SERJEANT, in '*Penny Cyclopædia*.'

SERJEANTS-AT-ARMS are limited by statute 13 Rich. II. c. 6, to thirty. Their office is to attend the person of the king, to arrest offenders, and to attend the lord high steward when sitting in judgment upon a peer. Two of these serjeants-at-arms, by the king's permission, attend the two houses of parliament. In the House of Commons the office of the serjeant-at-arms (as he is emphatically called) is to keep the doors of the house, and to execute such commands, especially touching the apprehension of any offenders against the privileges of the Commons, as the House, through its Speaker, may enjoin.

In some offices about the royal person the principal officer of the department is distinguished by the appellation of serjeant, as the serjeant-surgeon.

SERJEANTY, GRAND. [GRAND SERJEANTY.]

SERVANT, one who has contracted to serve another. The person whom he has contracted to serve is styled master. Servants are of various kinds: apprentices [APPRENTICE], domestic servants who reside within the house of the master, servants in husbandry, workmen or artificers, and clerks, warehousemen, &c. From the relation of master and servant a variety of rights and duties arise, some of which are founded on the common law, and some on statute.

A contract of hiring and service need

not be in writing unless it be for a period longer than a year, or for a year to commence at some future time. If in writing, it is not liable to any stamp duty, unless it apply to the superior classes of clerks, &c. All such contracts imply an undertaking on the part of the servant faithfully to serve the master, and to do his lawful and reasonable commands within the range of the employment contracted for; on the part of the master, to protect the servant and pay him his hire or wages. In all hirings where no time is expressed, except those of domestic servants, it is a rule of law that the contract shall continue for a year. In the case of domestic servants it is determinable by a month's warning, or the payment of a month's wages. Servants in husbandry can only be discharged or quit the service upon a quarter's notice. This rule as to time may of course be rebutted by any circumstances in the contract inconsistent with its existence. In the case of immorality, or any kind of offence amounting to a misdemeanor committed during the time of the service, or of continued neglect, or determined disobedience, a servant may be immediately discharged. If the servant is a domestic, he is nevertheless entitled to wages for the time during which he has served. But in other cases, where the contract is entire for a year, the wages cannot be apportioned, and the service having been determined before the expiration of the time contracted for, in consequence of the fault of the servant, he is not entitled to claim wages for any portion of the time during which he has served. The contract still continues to exist, notwithstanding the disability of the servant to perform his duties from illness, and he is therefore still entitled to receive his wages. The master, however, is not bound to pay the charges incurred by medicine or attendance upon his sick servant. In case the goods of the master are lost or broken by the carelessness of the servant, the master is not entitled to deduct their value from the wages of the servant, unless there has been a contract between them to that effect. His only remedy is by an action at law against the servant. Where a master becomes bankrupt, the commissioners are authorised,

on proof that they are due, to pay six months' wages to his clerks and servants. If the wages for any longer period are due, they must be proved like other debts under the fiat. If a servant has left his service for a considerable time without making any demand for wages, it will be presumed that they are paid. A master may chastise his apprentice for neglect or misconduct, but he will not be justified in striking any other description of servant. Servants who steal or embezzle their master's goods are subject to a greater degree of punishment than others who commit those crimes. Masters are not compellable to give a character to servants who leave their employment. If they choose to do so, and they give one which is false, they may be liable to an action at the suit of the servant; but in order to recover in such an action, the servant must prove that the character was maliciously given for the purpose of injuring him. If the master, merely for the purpose of confidentially communicating, *bonâ fide* state what he believes to be the truth respecting a servant, he is not responsible for the consequences of his communication.

By a great variety of statutes, the provisions of which are collected and explained in Burn's *Justice*, tit. 'Servants,' a special jurisdiction is given to magistrates over servants in husbandry, and also in many classes of manufactures and other employments. None of these rules of law apply to domestic servants. The object of them, as relates to servants in husbandry, is to compel persons who have no ostensible means of subsistence to enter into service, to regulate the time and mode of their service, to punish negligence and refusal to serve, to determine disputes between masters and servants, to enable servants to recover their wages, and to authorise magistrates under certain circumstances to put an end to the service.

Those statutes which relate to servants in manufactures and other employments prohibit the payment of wages in goods, and provide for their payment in money, and for the regulation of disputes concerning them. They also contain various enactments applicable to the cases of

workmen, &c., absconding, neglecting, or mismanaging their work, injuring or embezzling the materials, tools, &c., entrusted to them, and fraudulently receiving those entrusted to others. With respect also to this class of servants, magistrates have authority to put an end to the contracts of hiring and service. As to combinations of masters or workmen, see COMBINATION LAWS, p. 570.

A master is not guilty of the offence of maintenance, though he maintain and support his servant in an action brought by him against a third party. When a servant is assaulted, his master is justified in assisting his servant, and repelling the assault by force, although he himself be not attacked; and under similar circumstances a servant may justify an assault committed in defence of his master. A master is answerable, both civilly and criminally, for those acts of his servant which are done within the range of his employment. Thus a master is indictable if a servant commit a nuisance by throwing dirt on the highway; and a bookseller or newsvender is liable, criminally as well as civilly, for libels which are sold by his servant in his shop. This liability of the master does not release the servant from his own liability to punishment for the same offence. The servant is also liable when he commits a trespass by the command of his master. A master, although liable civilly for any injuries arising from the negligence or unskilfulness of his servant, is not responsible for the consequences of a wilful act of his servant done without the direction or assent of the master; but the servant alone is liable. Difficulties have sometimes occurred in determining who is responsible in the character of master for damages done to third persons by a servant. The following is an instance:—When a coachman is sent by the owner of horses let out for the purpose of drawing a private carriage, and, while driving the hirer in his private carriage, does some damage to a third party, it has been held that the owner of the horses was liable; for the servant is the servant of the horse owner, and not of him whom he is driving. Where a servant makes a contract within the range of his employ-

ment, what he does will bind his master, just as if he had expressly authorised the servant. But in all cases where there is no express evidence of the delegation of the master's authority, there must be facts from which such delegation can be inferred. Where a servant obtains goods for his master, which the master uses, and he afterwards gives money to the servant to pay for them, the master will be liable to pay for them, though the money should have been embezzled by the servant. If a coachman go in his master's livery to hire horses, which his master afterwards uses, the master will be liable to pay for them, though the coachman has received a large salary for the purpose of providing horses; unless, indeed, that fact were known to the party who let out the horses. If a master is in the habit of paying ready money for articles furnished to his family, and gives money to a servant, on a particular occasion, for the purpose of paying for the articles which he is sent to procure, the master will not be liable to the tradesman if the servant should embezzle the money. If articles furnished to a certain amount have always been paid for in ready money, and a tradesman allows other articles of the same character to be delivered without payment, the master will not be liable, unless the tradesman ascertains that the articles are for the master's own use. Where a tradesman, who had not before been employed by a master, was directed by a servant to do some work, and afterwards did it without any communication with the master, it was held that the master was not liable, though the thing upon which the work was done was the property of the master.

Any person who interferes with the master's right to the services of his servant, does him an injury for which he is responsible in an action for damages. A master may be deprived of the services of a servant, either by some hurt done to a servant, or by his being enticed out of the service. An action, therefore, may be brought by a master where a servant has received some personal injury disqualifying him from the discharge of his duties as a servant, as where he has been disabled by the overturn of a coach, or the

bite of a third person's dog. The action by a parent against the seducer of his daughter is of this class. [PARENT AND CHILD.]

An action will not lie against a party for enticing away a servant, if the servant has paid to the master the penalty stipulated for by the agreement of hiring and service in case of his quitting his master's service. If a servant has been enticed away from the service, an action lies against him for his breach of contract, as well as against the party who has enticed him away.

The statute 32 Geo. III. c. 56, is "for preventing the counterfeiting the certificates of the characters of servants." Independently of this statute, a person who wilfully gives a false character with a servant is liable to an action at the suit of the party who has been induced by the false character to employ the servant, for any damages which he may suffer in consequence of employing him.

Formerly a settlement was gained by residence in a parish under a contract of hiring and service for a year, but by the Poor Law Amendment Act no settlement can for the future be gained by such means. (Blackstone, *Com.*, book, i., c. 14; Burn's *Justice*, tit. 'Servants.')

SERVICE. [SERVANT.]

SERVICES. [TENURE.]

SESSION, COURT OF, SCOTLAND.

[JUSTICIAR OF SCOTLAND.]

SESSION, KIRK. [GENERAL ASSEMBLY OF THE CHURCH OF SCOTLAND.]

SESSIONS. A session is the period during which any court of law sits for the transaction of judicial business; but the term Sessions is commonly used to denote the meeting of the justices of a county, or other district which has a separate commission of the peace, for the execution of the authorities conferred by the crown by that commission and of other authorities given by act of parliament.

*County Sessions.*—The commission of the peace issued by the crown for the purpose of creating county magistrates, consists of two branches. The former relates to the powers to be exercised by justices individually and separately. [JUSTICES.] The second branch of the commission creates the powers of the justices

when assembled in sessions. It begins as follows:—We have also assigned you, and every two or more of you (of whom any one of you, the aforesaid A. B., C. D., E. F., &c. we will shall be one), our justices, to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever, and of all and singular other crimes and offences, of which the justices of our peace may or ought lawfully to inquire, &c.

The words "of whom any one of you the aforesaid A. B., C. D., E. F., &c. we will shall be one," constitute the Quorum clause, so called because when the commission was in Latin, the clause ran "*quorum* A. B. vel C. D. vel E. F., &c. unum esse volumus."

The statute 1 Mary, sess. 2, c. 8, s. 2, prohibits sheriffs from exercising the office of justice of the peace during the time that they act as sheriffs. If a man be created a duke, archbishop, marquess, earl, viscount, baron, bishop, knight, judge, or serjeant-at-law, his authority as justice of the peace remains. (1 Edw. VI. c. 7.) By 5 Geo. II. c. 18, s. 2, attorneys, solicitors, and proctors are prohibited from acting as justices of the peace for any county during the time that they continue in practice.

A meeting of the justices held for the purpose of acting judicially for the whole district comprised within their commission constitutes a court of General Session of the peace. By 12 Rich. II. c. 10, sessions are required to be held in every quarter of the year, or oftener if need be. The four sessions so held are styled courts of general Quarter-session of the peace, or "quarter-sessions." By different statutes the quarter-sessions are directed to be held at uniform periods. The times at which they are directed to be held are, the first week after the 11th of October, the first week after the 28th of December, the first week after the 31st of March, the first week after the 24th of June. Though the justices act irregularly in omitting to convene the quarter-sessions

at the prescribed periods (except the April sessions, in respect of which power is expressly given to the justices to alter the time to any day between the 7th of March and the 22nd of April), sessions held as quarter-sessions in other periods of the quarter are legal quarter-sessions. When the business to be transacted at a court of quarter-sessions is not completed before the time at which it is thought desirable for the justices to separate, the court is usually adjourned to a subsequent day; this is also done when there is reason to expect that new matters will arise which it will be desirable to dispose of before the next quarter-sessions. Two justices, one of them being of the quorum, may at any time convene a general session of the peace; but at such additional session no business can be transacted which is directed by any act of parliament to be transacted at quarter-sessions.

Both general sessions and general quarter-sessions are held by virtue of a precept under the hands of two justices, requiring the sheriff to return a grand jury before them and their fellow-justices at a day certain, not less than fifteen days after the date of the precept, at a certain place within the district to which the commission extends, and to summon all coroners, keepers of gaols and houses of correction, high constables, and bailiffs of liberties within the county.

Persons bound to attend at the sessions are:—First, all justices of the peace for the county or district. Secondly, the *custos rotulorum* of the county, who is bound to attend by himself or his deputy, with the rolls of the sessions. Thirdly, the sheriff by himself or his under-sheriff, to return the precept and lists of persons liable to serve on the grand or petty jury, to execute process, &c. Fourthly, the several coroners of the county or district. Fifthly, the constables of hundreds or high constables. Sixthly, all bailiffs of hundreds and liberties. Seventhly, the keepers of gaols, to bring and receive prisoners. Eighthly, the keeper of the house of correction, to give in a calendar and account of persons in his custody. Ninthly, all persons returned by the sheriff as jurors. Tenthly, all persons who have entered into a recognizance to

answer charges to be made against them, or to prosecute or give evidence upon charges against others.

Persons summoned on grand or petty juries ought to be males between 21 and 60 years of age, who are possessed of 10*l.* a year in lands or rents, or 20*l.* a year in leaseholds for an unexpired term or terms of 21 years or more, or who are householders, rated to the poor on a value of not less than 20*l.* (in Middlesex 30*l.*), or who occupy houses containing not less than fifteen windows, and who are not peers, judges of the superior courts, clergymen, Roman Catholic priests, dissenting ministers following no secular employment but that of schoolmasters, and many others.

The justices in sessions have criminal jurisdiction, to be exercised partly according to the rules of common law and partly pursuant to different acts of parliament; they have also jurisdiction in certain civil matters created by different statutes; they have an administrative power in certain county matters; and they have power to fine and imprison for contempt.

1. The criminal jurisdiction of justices in general and quarter-sessions is now defined by the 5 & 6 Viet. c. 38, which enacts "that after the passing of this Act neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any session of the peace nor the adjournment thereof try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the offences mentioned under the 18 heads contained in the first section of the act. The second section provides that any judge of the supreme courts at Westminster, acting under a commission of oyer and terminer and gaol delivery for any county, may issue a writ or writs of certiorari or other process directed to the justices of the peace acting in and for such county, &c. or to the recorder of any court within the same county, commanding the said justices and recorder severally to certify and return into such

court of oyer and terminer, &c. all indictments and presentments found or taken by such justices or recorder of offences which after the passing of this act they will not have jurisdiction to try, and the several recognizances, examinations, and depositions relative to such indictments and presentments; and, if necessary, by writ or writs of Habeas Corpus may cause any person in the custody of any gaol or prison, charged with any such offence, to be removed into the custody of the common gaol of the county, that such offences may be tried under the said commission. The fourth section empowers any court of general or quarter-session or adjourned session of the peace to divide such court into two courts, which may sit apart for the better despatch of business, in the manner and subject to the conditions in this section mentioned.

Previously to the 6 & 7 Will. IV. c. 114, it was in the discretion of the magistrate before whom the depositions were taken, whether he would allow them to be inspected; even the party accused had no right to demand a copy of the depositions, though in cases of treason or felony he was entitled to demand a list containing the names of the witnesses for the prosecution. But by that act (s. 3) "all persons held to bail or committed to prison for any offence, are authorised to require and have, on demand, from the person who has the lawful custody thereof, copies of the examinations of the witnesses respectively upon whose depositions they were held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words; subject to a proviso, that if such demand be not made before the day appointed for the commencement of the sessions at which the trial of the person on whose behalf such demand is made is to take place, such person is not to be entitled to have any copy of such examination of witnesses, unless the person to preside at such trial be of opinion that such copy may be made and delivered without delay or inconvenience to such trial. The chairman is, however, authorised to postpone the trial on account of such copy of the examination of witnesses not hav

ing been previously had by the party charged :” and by sec. 5, all persons under trial are authorised, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial is had.

A prisoner or defendant, charged with a felony or a misdemeanor, cannot have the assistance of counsel to examine the witnesses, and reserve to himself the right of addressing the jury. But if he conduct his defence himself, and any point of law arises which he professes himself unable to argue, the court will hear it argued by counsel on his behalf.

II. The quarter-sessions have an original jurisdiction in all matters required to be done by two or more justices, except in cases in which a power is given of appealing to the sessions.

III. Statutes which give summary jurisdiction to one or more magistrates, in most cases allow their decision to be brought before the sessions by way of appeal. Notice of appeal is generally required, and the court is precluded from entertaining any objections not specified in the notice. Subject to this restriction, the case is heard as if the question were raised for the first time. When questions of difficulty in matter of law present themselves upon the hearing of an appeal, the party against whom the sessions decide frequently applies for leave to state a special case for the decision of the Court of King’s Bench: the majority of the justices may either grant or reject the application; and if no special case be stated, the judgment of the quarter-sessions upon an appeal, or upon any other matter in which they proceed in a course prescribed by statute, different from the course of the common law, cannot be reviewed by any other court. Where the quarter-sessions act as a court of criminal jurisdiction under the powers given by the commission, and according to the course of common law, a writ of error lies upon the judgment of the sessions to the court of King’s Bench, and from that court to the Exchequer Chamber, and ultimately to the House of Lords.

IV. The quarter-sessions have juris-

diction over the appropriation of the county stock, an annual fund raised principally by county rates. This part of the business of the court is usually disposed of before any other, and in practice the first day of the sessions is exclusively devoted to what is called “the county business.”

V. In common with other courts of record, justices of the peace, whether assembled in sessions, or sitting as individual magistrates, may fine and imprison for contempt. No superior court can inquire into the existence or non-existence of the fact which has been so treated as a contempt, or into the reasonableness of the fine imposed or imprisonment awarded. The court of quarter-sessions has no power to punish contempts or other offences committed by one of their own body.

The justices being assembled in sessions elect a chairman. The grand-jury being sworn, the royal proclamation against vice and immorality is read by the clerk of the peace. The chairman delivers his charge to the grand-jury, in which, as he is in possession of the depositions taken when the prisoners were committed, he calls their attention to such cases as appear to present any difficulty, and explains such points of law as are necessary for their guidance. The grand-jury then retire to their room to receive such bills of indictment as may be brought before them.

When the business of the sessions is such as to be likely to occupy one court more than three days, it is usual to appoint a second chairman to preside in a separate court, under the authority of 59 Geo. III. c. 28. The bills of indictment for offences to be prosecuted at the sessions being prepared, the witnesses in support of the charge are sworn in court. The bills of indictment on parchment, with the names of the witnesses indorsed thereon, are taken to the grand-jury. The form of proceeding before the grand-jury is explained under *JURY*.

The bill, being indorsed by the grand-jury, is brought into court by the grand-jury, and delivered to the clerk of the peace, who reads the indorsement with the name of the prisoner and the nature of the charge. The prisoner is then ar-

raigned, and the trial proceeds in the same manner as at the assizes. If the prisoner be found not guilty, he is immediately set at liberty, unless there be some other matter before the court upon which he ought to be detained. If a verdict of guilty be returned, the sentence is pronounced by the chairman, such sentence, where the amount of punishment attached to the offence is not fixed, being first determined by the opinion of the majority of the justices present.

The sessions cannot be held without the presence of two justices at least; nor can they be adjourned by one justice, though two or more may previously have been present. Every act done as an act of sessions, before two justices have met, or after two have ceased to be present, is void.

The crown may grant a commission of the peace not only for an entire county, but also for a particular district within the county. In order, however, to exclude the interference of the county justices in the particular district, it is necessary either to introduce into the commission of the peace for the particular district a clause excluding the jurisdiction of the county magistrates, which is called a ne-intromittant clause, or to grant a new commission to the county magistrates excluding the particular district. If the former, which is the usual course, be taken, the county magistrates may still hold their sessions within the particular district, though they can exercise no jurisdiction in respect of matters arising within the district.

*Petty and Special Sessions.*—A meeting held by justices for the transaction of magisterial business arising within a particular district which forms a subdivision of the county or district comprised in the commission of the peace, is called a petty session; and if the meeting be convened for some particular or special object, as the appointment of overseers of the poor, of waywardens, of examiners of weights and measures, &c., it is called a special session. A meeting of magistrates cannot legally act as a special session, unless all the magistrates of the particular division are present, or have had reasonable notice to attend.

*Borough Sessions.*—The Municipal Corporation Act (5 & 6 Wm. IV., c. 76) directs that the recorder of any city or borough to which a separate court of quarter-sessions is granted under the provisions of that act, shall be the sole judge of such court [RECORDER], leaving the ordinary duties of magistrates out of sessions to be performed by the justices of the peace appointed by the crown for such city or borough. The recorder is required to hold a court of quarter-sessions once in every quarter of a year, or at such other and more frequent times as he may think fit, or as the crown may direct. Borough quarter-sessions are not, however, like county quarter-sessions, appointed to be held in particular weeks. In case of sickness or unavoidable absence, the recorder is authorised, with the consent of the town council, to appoint a barrister of five years' standing to act as deputy recorder at the next session, but no longer. In the absence of the recorder and of any deputy recorder, the court may be opened, and adjourned, and the recognisances respited, by the mayor; but the mayor is not authorised to do any other judicial act. Where it appears to the recorder that the sessions are likely to last more than three days, he may appoint an "assistant barrister" of five years' standing to hold a second court, for the trial of such felonies and misdemeanors as shall be referred to him, provided it has been certified to the recorder, by the mayor and two aldermen, that the council have resolved that such a course is expedient, and the name of the intended assistant-barrister has been approved of by a secretary of state.

Every burgess of a borough (or citizen of a city), having a court of quarter-session (unless exempt or disqualified otherwise than in respect of property), is liable to serve on grand and petty juries. Members of the town-council, and the justices of the peace, treasurer, and town-clerk of the borough, are exempt and disqualified from serving on juries within the borough; and they and all burgesses of boroughs having separate quarter-sessions are exempt from liability to serve on petty juries at the county sessions.

Other matters required by statute to be



done at quarter-sessions, and not expressly transferred to the town-council, devolve upon the recorder, as the appointment of inspectors of weights and measures, &c. Persons imprisoned in a borough gaol by county magistrates, under 6 and 7 Will. IV., cap. 105, may be tried at the borough sessions for offences committed out of the borough.

All criminal jurisdiction, which, before the passing of the Municipal Corporation Act, existed in any borough to which no court of quarter-sessions has since been granted, is taken away by the 107th section of that act.

#### SETTLEMENT. [POOR LAWS.]

SEWER, a place, according to Lord Coke, where water issues, or, as is said vulgarly, "sues," whence the word suera, or sewer. The word has acquired notoriety as giving the title to "The Law of Sewers," an important branch of English law. According to that law, the superintendence of the defences of the land against the sea, and against inundation by land-floods, and of the free course of navigable rivers, has been immemorially, "from the beginning of laws," says Callis, a matter of public concern: and from very early periods commissions under the common law have from time to time been issued by the crown, empowering persons to enforce the law on such subjects. Many statutes have been passed relating to sewers. The first, according to Lord Coke, is "Magna Charta," c. 23, which provides for the taking down of weirs. But the most important of these is 23 Hen. VIII. c. 5, commonly called "The Statute of Sewers," by which the law was extended, explained, and settled. Several statutes have been since passed, but the most comprehensive is the 3 & 4 Wm. IV. c. 22, amended by 12 & 13 Vict. c. 50. From these acts, especially that of Henry VIII., the general law of sewers must be ascertained. The Act of William IV. does not affect any private or local Act for sewers concerning any county or district, &c., or any commission of sewers in the county of Middlesex within ten miles of the Royal Exchange, except such as lie within any commission of sewers of the county of Essex, or any navigable river, canal, &c.,

under the management of trustees, by virtue of any local or private act, or any law, custom, &c., of Romney Marsh or Bedford Level.

The appointment of commissioners of sewers by the late Act is vested in the lord chancellor, the lord treasurer, and the two chief justices, or any three of them, of whom the chancellor must be one. Such as have not acted as commissioners before the passing of the statute of William IV. must be possessed, in the same county or the county adjoining that for which the commission issues, of landed estate in fee, or for a term of 60 years, of 100*l.* yearly value, or of a term of 21 years, 10 of which are unexpired, of 200*l.* yearly value, or be heir apparent to an estate of 200*l.* yearly value. Bodies corporate and absentee proprietors possessed of a landed estate of 300*l.* yearly value taxed to sewers may qualify an agent to act as commissioner, provided such agent is named in the commission; persons named ex-officio in any commission as mayor, &c., may act without any further qualification. Coincidentally with every commission there issues from the crown-office a writ of dedimus potestatem, addressed to a list of persons therein named, who are part of the commissioners named in the commission, and authorised to administer the oaths to the commissioners. Previous to entering on office each commissioner takes an oath before these parties for the due performance of his duty, and that he is possessed of the requisite qualification. A commission continues in force for ten years from the date of it; and the laws, decrees, and ordinances made under it, notwithstanding the expiration of the commission, continue in force until they are repealed.

Commissioners may be appointed to act in any part of the kingdom of England and Wales or the islands within that kingdom. The English seas are also said to be included within the kingdom of England. Each commission specifies the district to which it applies. The authority of the commissioners extends over all defences, whether natural or artificial, situate by the coasts of the sea, all rivers, water-courses, &c., either navigable or entered by the tide, or which

directly or indirectly communicate with such rivers, &c. But they have no jurisdiction over any ornamental works situate near a house and erected previous to the Act of William IV., except with the consent in writing of the owner. They have power to repair and reform the defences, and to remake them, when decayed, in a different manner, if this can be done more commodiously. They may also cause rivers, &c., to be cleansed and deepened, and remove any obstructions, such as weirs, mill-dams, and the like, which have been erected since the time of Edward I.; or, if such ancient obstructions have been since increased, they may remove the increase. If any navigable river is deficient in water, they may supply it from another where there is an excess. But the object to be attained by all these acts must be of a general nature, and have for its purpose the furtherance of public general defence, drainage, or navigation. The commissioners have authority also to make and maintain new, and to order the abandonment of old works, and to determine in what way the expenses of the new works shall be contributed: but they cannot undertake any new work without the consent in writing of three-fourths of the owners and occupiers of the lands to be charged. They may also contract for the purchase of lands where necessary to the accomplishment of their objects; the price of which, if not agreed on, must be determined by a jury summoned for that purpose. In them is vested the property in such lands, and in all the works, tools, materials, &c., of which they are possessed by virtue of their office. The commissioners have power to make general laws, ordinances, and provisions relating to matters connected with sewers in their district, as well as to determine in particular instances. These laws are to be in accordance with the laws and customs of Romney Marsh, in Kent, or "after their own wisdoms and discretions." The mention of discretion occurs very frequently in the statute of Henry VIII., and would seem to vest, as in truth it does vest, a very large and undefined power in the hands of the commissioners. Notwithstanding, however, this reference

to their discretion, they have no authority to do anything which is not both just and reasonable, and also in accordance with the laws of the land.

To accomplish the purposes for which they are created, the commissioners have power to appoint a clerk, and various officers called surveyors, collectors, bailiffs, &c.; and they themselves, or any six of them, when duly assembled, constitute a court of record. By their own view, or the report of their surveyor, they may ascertain what old defences need repair, what new ones are necessary, what impediments or annoyances require removal, what money or materials must be provided for such purposes. To form a court, ten days' notice to the owners or occupiers of lands within the district who are required to attend are necessary, except in a case of emergency, when it may be summoned by two commissioners immediately. It is the duty of the sheriff, on receipt of the precept of the commissioners, to summon a jury from the body of the county to attend in their court. Before any charge can be laid, the commissioners must further inquire, through means of the jury, by witnesses examined on oath before them, where it is that any defence is needed or any nuisance exists; and by whose neglect or default, if any, such things have occurred, and what parties are liable to contribute to the expenses of putting all in a proper condition. The general fundamental criterion by which the liabilities of parties to contribute must be ascertained, is the circumstance of their deriving benefit or avoiding injury from the works of sewers. When a party has been once presented as liable by a jury, he is presumed to continue liable during the existence of that commission. The liabilities of parties to contribute may arise either by holding lands on condition of contributing to repairs of a bank, &c.; or by custom, or prescription, or by covenant. If a man holding lands charge them by covenant for himself and his heirs, and the lands descend to the heir, he is liable to their amount. Parties also may be charged by reason of their ownership of the bank, &c., requiring repairs, or because they have the use or

profit of it; or because they are frontagers, that is, have lands joining the sea where the defences are needed. If no one appears to be liable for any of these causes, the expenses are then to be imposed on all the level, that is, all the land lying upon the same level. The reason for this imposition is, that all such land is liable alike to suffer by any injury to the defences against the sea, or by any defect in the drainage, and benefits alike by their restoration and maintenance; the whole of it therefore ought to contribute towards the expenses incurred. Even in those cases where a special liability, such as has been above stated, rests on particular individuals, the whole level is still bound to contribute in any case of immediate danger; or where, in spite of the due repairs having been done by the party liable, an injury has occurred by some sudden and inevitable accident, as an extraordinary tide or flood, or where the land liable is insufficient for the expenses necessary. Any new work also must be made and maintained at the expense of the whole level; and where extraordinary repairs are necessary to a great part of the sea, not the level only, but the whole county is liable. The parties liable within the level are all those who have within it any lands or tenements, or profits *à prendre*, such as rights of common, of fishery, &c., provided they receive benefit by the repair or injury by the non-repair; but a party may be exempted from contributing to a general assessment, on the ground of a special custom under which he is bound to do some particular act, such as repairs of a bank for the general service. The duty of the jury, after hearing witnesses, is to present the parties liable to repair; and in cases where the whole level is liable, to present the particular quantity of land or other profit that every one has who is liable within the level. It is sufficient to charge the ostensible owner or occupier. These presentments may be traversed or contested by the party whom they charge, and he may attempt to disprove the facts stated in them, and so show that he is not liable to the extent charged, or not liable at all. After the necessary facts are ascertained, the commissioners make a decree

for the assessment of every person in the proportion to which he appears to be liable. The apportionment must be made by the commissioners: it is not sufficient for them to assess a certain sum upon a township or other district, leaving it to the parties themselves to apportion. Where, by reason of immediate necessity, works have been done without any presentment of a jury, the commissioners may afterwards make a rate to defray the expenses. In cases of emergency, the commissioners, by their order, may compel the service of carts, horses, and labourers: they may take soil, &c., and cut down timber within the level, if necessary for their purposes, subject of course to a proper remuneration, which may be recovered before them.

After an assessment has been duly made and demanded, the commissioners may by their warrant direct their bailiff to distrain and sell the goods of those who neglect to pay (the distress may be made without the district of the commissioners); or the party may be amerced for non-payment, or the lands themselves which are liable may be sold. In case of such a sale, a certificate of it must be made by the commissioners into Chancery. Constables within the district are bound to obey the orders of the commissioners. In cases where an obstruction or impediment has been, after presentment by the jury, ordered to be removed, the party causing it may be amerced; or if he is unknown, then the person who most suffers by the injury may be empowered by the commissioners to remove it; or the surveyor, after notice, may do what repairs, &c., are necessary, at the expense of the parties making the default; and for any act of negligence or default or misfeasance, an amercement may be imposed by the jury. The commissioners themselves may enforce parties to fulfil the duties lawfully imposed upon them. Thus they may fine a jurymen who refuses to act, or a sheriff who fails to summon a jury; and they may maintain order in their court by fining and imprisoning those persons who attempt openly to disturb it.

If the commissioners make an order in a matter out of their jurisdiction, the

order may be removed by certiorari into the Court of King's Bench, and there quashed; and the commissioners are fineable for contempt if they proceed after a certiorari has been allowed. But a certiorari cannot be demanded of right: it is within the discretion of the Court of King's Bench to refuse it, and the impropriety of the order must be made out very distinctly before a certiorari will be granted. Where the order is for repairs, and is made upon an inquisition before a jury who find that the party ought to repair, the court will not proceed in the matter unless the party charged consents to repair in the meantime. If it afterwards appears that he ought not to repair, he will be entitled to reimbursement, which may be awarded to him by the commissioners. An order which is good in part may be confirmed for so much, although it is quashed for the remainder.

An action may be brought against the commissioners for anything done by them beyond their authority. They may sue and be sued in the name of their clerk, who, nevertheless, may be a witness for them. (*Callis On Sewers*; 4 *Inst.*; *Comyns's Digest*, 'Sewers'; *Viner's Abr.*, 'Sewer.')

The sewers of the city of London and its liberties are under the care of commissioners appointed by the corporation, who were first empowered to make the appointment by the 19 Chas. II., c. 31, the act for rebuilding the city after the great fire. They were entrusted with this power by that Act for seven years only. A few years afterwards it was made perpetual; and by 7 Anne, c. 9, the commissioners of sewers for the city of London were invested within the city and its liberties with all the authorities possessed by the ordinary commissioners elsewhere. The Roman law (*Dig.* 43, tit. 12, 13, 14, 15, 21, 23) contains certain provisions as to public rivers, cuts for navigation, and private and public drains in towns (*cloacæ*).

SHERIFF, the Shire-Reve (scyr-ge-refa), from the Saxon word *reafan*, "to levy, to seize," whence also greve. The German word is *graf*. The *gerefa* seems to have been a fiscal officer. In the Saxon period he represented the lord of a district,

whether township or hundred, at the folk-mote of the county; and within his district he levied the lord's dues, and performed some of his judicial functions. (*Palgrave, Rise and Progr.*, i. 82.) He was usually not appointed by the lord, but elected by the freeholders of the district; and, accompanied by four of them, was required to be present on its behalf, as well as on the lord's, at the folk-mote or county court. In like manner the Saxon prince or king employed in the shires or larger districts his *gerefa* or *reve*, who levied his dues, fines, and amerciaments; to whom his writs were addressed; who exercised on his behalf regal rights in the shire, for the preservation of the peace and the punishment of offenders; presided over the courts-leet or views of frankpledge, and (at least in the absence of the earl in ancient times, and since the Conquest instead of the earl) presided over the hundred and county courts. It is difficult to determine how far the functions of the sheriff were concurrent with, and how far derived from, the ealdorman or earl of Saxon and Danish times; and the confusion between these offices has been increased by the translation, in our ancient laws, of the word sheriff in the Latin into *vice comes*, and in Norman French into *visconte* or *viscount* (deputy of the earl); whereas certainly many of the sheriff's powers even in Saxon times were derived from the freeholders, or from the crown alone, and the word *graf* (*gerefa*) in German was equivalent to our earl. That before and for a century after the Conquest the sheriff had powers independent of the earl, is obvious from the fact, that in the circuit (*tourn*) which he made periodically (*Spelman's Gl.*, 'Vice Comes') of his shire for the administration of justice (as the Saxon king made a circuit of his realm), he was accompanied not only by the freeholders, but by the bishop, the earl, and barons, until these noblemen were exempted from the duty by statute 52 Henry III. c. 10 (A.D. 1267).

Sometimes the shrievalty, by grant of the crown, was hereditary; it was often held for life, or for many years, and there were sometimes more sheriffs than one in a county, the persons chosen for the office

being, according to Spelman, "totius regni proceres;" but the sheriff was usually chosen by the freeholders of the shire. The statute 28 Edward I. c. 8, which says that "the king hath granted unto his people that they shall have election of their sheriff in every shire (where the sheriff is not fixed in fee) if they list," is rather declaratory of the people's right than a grant of a new privilege. By the 14 Edward III. c. 7, it is enacted that no sheriff tarry in his bailiwick more than a year, and then another, who hath land sufficient in his bailiwick, shall be ordained on the morrow of All Souls (3rd November) by the chancellor, treasurer, and chief baron of the exchequer, taking to them the chief justices of either bench if they be present.

At present the crown in most cases appoints the sheriffs, and also fills up any vacancy which is occasioned by the death of a sheriff during his year of office. To some corporations of cities which are counties of themselves charters have given the power to elect their own sheriffs; and the city of London has the perpetual right to elect the sheriff of Middlesex. In the county of Durham the bishop was sheriff until he was deprived of palatine powers in 1836; and in Westmoreland the office is hereditary in the family of the earl of Thanet as heir-general of the Viponts, to whom the shrievalty was granted by King John. The annual appointment of sheriffs is now in most counties made thus:—On the morrow of St. Martin (12th November), the lord chancellor, first lord of the treasury, and chancellor of the exchequer, together with all the judges of the three courts of common law, meet in the exchequer chamber, the chancellor of the exchequer presiding. The judges then report the names of three fit persons in each county, and of these the first on the list is chosen, unless he assigns good reasons for exemption. The list thus made is again considered at a meeting of the Cabinet held on the morrow of the Purification (3rd February), at the president of the council's, and attended by the clerks of the council, when the excuses of the parties nominated are again examined, and the names are finally determined on for the approval of

the queen, who, at a meeting of the privy council, pierces the parchment with a punch opposite the name of the person selected for each county; and hence has arisen the expression of "pricking the sheriffs." The judges of assize annually add the requisite number of names to their lists by inserting those of persons recommended by the sheriff who goes out of office.

The sheriff derives his authority from two patents, one of which commits to him the custody of the county, and the other commands the inhabitants to aid him. He takes an oath of office, the greater part of which relates to his collection of the crown revenue, and he gives security to the crown that he will duly account. He then appoints an under-sheriff, by whom in fact the duties of the office are performed. These duties are various and important. Lord Coke quaintly says that the sheriff has a triple custody—1st, of the *life of justice*, because to him are addressed the writs which commence all actions, and he returns the juries for the trial of men's lives, liberties, lands, and goods; 2ndly, of the *life of the law*, because he executes judgments of the courts; and 3rdly, of the *life of the republic*, because he is in his county the principal conservator of the peace. He presides in his own court as a judge, and he not only tries all causes of 40s. in value, but also much larger questions under the writ of Scire facias. By Magna Charta he is prohibited from holding pleas of the crown. He presides at all elections of members of parliament for the county and coroners, and hence he cannot during the year of his office be elected a knight of the shire. He apprehends all wrong doers, and for that purpose, in criminal cases, he is entitled to break open outer doors to seize the offender: he defends the county against riot or rebellion or invasion [LORD-LIEUTENANT], and to this end may require the assistance of all persons in it who are more than fifteen years of age, and who, when thus assembled under the sheriff's command, are called the *posse comitatus*. To refuse to the sheriff the aid which he requires is an offence punishable by fine and imprisonment. The sheriff takes precedence of

all persons in the county. He seizes all lands which have fallen to the crown, and levies all fines and forfeitures; but he is not permitted to act as a justice of the peace. He executes all writs that issue from the superior courts, whether they are writs that commence an action or writs of execution; he is likewise responsible for the execution of criminals. He receives and entertains the judges of assize, on whom he is constantly in attendance whilst they remain in his shire.

To assist him in the performance of his duties, the sheriff employs an undersheriff and also a bailiff and gaolers, from whom he takes security for their good conduct. He is prohibited by very ancient statutes from selling his office or the profits of any part of it.

The liability of the sheriff for breach or neglect of his duties is a frequent source of litigation. Few assizes occur without actions being brought against him for illegal arrests or levies, or for wrongfully abstaining from executing the process addressed to him. Thus the decisions affecting him are numerous and complicated, and there are many treatises concerning the office, of which Dalton's 'Office and Authority of Sheriff' (1682), is the most relied on.

(*Spelman's Glossary*, articles 'Graphio,' 'Comes,' 'Vice-Comes;' *Coke upon Littleton*, Hargr. and Thomas's edition, vol. i.; Bacon's *Abridgement*; Palgrave's *Rise and Progress of the English Constitution*, i.)

**SHERIFF (SCOTLAND).** In Scotland the duties of the sheriff are not, as in England, almost entirely executive. He exercises an extensive judicial authority, and a large portion of the general litigation of the country proceeds before this class of local judges. In earlier times his authority appears to have been merely of an executive character, and, appointed by the crown, he was the person to whom the royal writs, issuing from the supreme courts, were usually directed. He was the ordinary conservator of the peace within the local limits of his authority. He was an important fiscal officer, having in the general case the duty of levying the feudal casualties, forfeitures, and other items of revenue; and by statute

he was vested with the power of mustering the military force of the country to the weapon-showing. In very early times, his tenure of office appears to have been limited by the grant; at a period comparatively later, the office became, in the general case, hereditary. The precise principle on which that division into shires, by which the boundaries of each sheriff's authority were marked, is not generally known. In all Latin documents he was called the vice-comes, and it might thence be inferred that each sheriff was the deputy of a *comes* or earl. There has, however, no trace been found of the dignity of an earl in Scotland involving the right to exercise judicial or executive functions, nor did that title, like the authority of the sheriff, bear any reference to the boundaries of the shire or to any other territorial allotment. The terms of the Act for abolishing heritable jurisdictions in Scotland, which will be noticed below, might encourage the supposition that they were founded on the idea of the sheriff being a depute or subordinate officer, if it were not pretty clear that the structure of that Act was in some measure affected by a confusion between the office of high sheriff in England and that of sheriff in Scotland. The Act, viewing the appointment of a sheriff-principal or high sheriff from among the unprofessional gentry, and of the acting judicial officer from the legal profession, provides that "it shall not be lawful for any principal or high sheriff or steward in Scotland personally to judge in any cause, civil or criminal, within his shire or stewartry in virtue of such his office; any law or usage in any ways to the contrary notwithstanding." (20 Geo. II. c. 43, § 30.) By the same statute the principal or high sheriff can only be appointed during pleasure, or for a period not exceeding a year. It is not easy to discover how such a nominal office came into existence, if it actually was in existence before the passing of the Act. The commissioners who reported on the courts of justice in Scotland in 1818 stated that they could not discover any functions which it was the duty or privilege of the holder of that office to perform; and in reference to the provisions

of the Act, they say "It is to be noticed that his majesty's right of appointing an officer called a principal or high sheriff was not touched by the statute of George II., although it was no longer competent to confer such an office *heritably*. These appointments continued to be made subsequent to the statute, and it was well known that commissions of this kind have, even in very recent times, been granted by the crown, for purposes of the executive government, and connected with the office of lord-lieutenant. But whatever may have been the views of the legislature as to the proper ministerial or other functions of such an officer in time coming, it is certain that by the enactment referred to the whole judicial powers of the ordinary magistrate for the county are thus expressly reserved and excepted from any grant to be thereafter made of the office of sheriff in this part of the kingdom. And these provisions were in strict conformity with the previous and most ancient state of the law." The Act above referred to, generally called the Jurisdiction Act, was passed for the purpose of abolishing all those remnants of the feudal courts of Scotland which were hereditary, or in any other shape of the nature of property; of bringing all judicial offices within the appointment of the crown, and their holders under responsibility to the public. It was passed in consequence of the insurrection of 1745, and it is the point from which we have to date the equal administration of justice in Scotland. By the same statute, the sheriff is authorised to appoint one or more Substitutes. This was in conformity with old practice, by which the sheriff, who might not himself be trained to the law, generally appointed a legal practitioner to act as his substitute. At the present day there is a substitute in every county, and in the larger counties there are two or more. Both the sheriff and his substitute are lawyers, but the latter is the local resident judge, the former generally frequenting the courts in Edinburgh, where he hears appeals from his substitute, and making occasional visits to his county. By the Jurisdiction Act it was provided that each sheriff should reside in his county during four months

in each year. This provision fell into desuetude, and it became the usage for such sheriffs as continued to practise at the bar to remain in Edinburgh, while the greater portion, who had given up or had not obtained practice, resided at their country seats, or wherever choice or convenience dictated. This circumstance was the object of much animadversion by the friends of law reform, and a wide difference of opinion was expressed on the matter, some maintaining that the sheriff as well as his Substitute ought to be a resident judge, while, in the words of the Report above cited, the former (who is styled Sheriff Depute) in Edinburgh "was in some degree countenanced by high legal authorities, who consider the attendance of the sheriff's-depute in the court of session, during the sittings, to be more useful than a literal adherence to the statutory rule." It has been supposed that such an attendance tends both towards a higher degree of legal learning in the sheriffs and to uniformity of practice being promoted by their occasionally consulting each other. It was very clear, however, that it was disadvantageous to the public that there should be any of these judges who neither reside within their counties nor at the fountain of Scottish legal learning in Edinburgh, and by the 1 & 2 Vict. c. 119, it was enacted that each sheriff appointed after the 31st of December, 1838, shall remain in attendance on the court of session, but shall hold eight courts in his county during the year. The sheriffs of Edinburgh and Lanark are exempted from attendance on the court of session, in the understanding that the business of their respective courts is sufficient fully to occupy their time. It may be mentioned that many law reformers maintain that these two sheriffships are a type of what the others ought to be. The incumbents receive much higher salaries than the other sheriffs, and have their time fully occupied. It has been held that, in regard to the other counties, instead of appointing persons who are endeavouring to have business at the bar, and giving them duties which only occupy part of their time, and salaries for which they would not generally agree to

give up their profession, it would be wiser to unite several counties together, and employ lawyers with salaries equal to the full value of their whole time, to these enlarged districts. These various opinions were very actively discussed from ten to fifteen years ago, but it is now pretty clear that it is in the persons of the sheriffs-substitute, or permanent local judges, that the public look for the beneficial working of the system. In civil questions an appeal lies (without new pleadings) from the sheriff-substitute to the sheriff, but wherever the former is a sound lawyer and an industrious man, the privilege is seldom used. The salaries of the sheriffs-substitute have lately been raised, according to a sound policy advocated by many of the most cautious and economical politicians of the country; they average at present about 450*l.* The salaries of the principal sheriffs vary widely, but the whole amount of their aggregate incomes, as returned to parliament in 1843 (*Parliamentary Papers*, 270), when divided by their whole number, gives 551*l.* to each. From the state in which the profession of the bar of Scotland has been for the past ten years, several of its members have been induced to accept the office of sheriff-substitute as vacancies have occurred. Formerly the office fell to country practitioners, who, not quite contented with the emoluments, eked them out by private practice; a state of matters seriously detrimental to the equal administration of justice. In some instances, even retired officers in the army or unprofessional country gentlemen were the best qualified persons who would undertake the office. By the Act of 1 & 2 Victoria, it was provided that no sheriff-substitute should act as a law-agent, conveyancer, or banker. By the same Act it was provided that though the sheriff-substitute should continue to be appointed by the sheriff, he should not be removable, except with the consent of the lord president and lord justice clerk of the court of session. In terms of the same Act, the substitute must not be absent from his county more than six weeks in one year, or more than two weeks at a time, unless he obtain the consent of the sheriff, who must then

act personally or appoint another substitute. It may be observed, for the sake of preventing some confusion which the phraseology of the statute law in relation to sheriffs may occasion to the general reader, that in one or two instances, as in that of Kirkcudbright, the person who exercises the functions of sheriff is called the Stewart. This designation owes its origin to certain peculiarities of territorial tenure which cannot be briefly explained and are subject to doubt and dispute. After the Reformation, the sheriffs were generally appointed commissaries of the local commissariat districts which most nearly conformed with their respective jurisdictions, and in 1823 (4 Geo. IV. c. 97) the commissariat functions were appointed to be merged in those of the sheriff.

The jurisdiction of the sheriff in civil matters does not extend to questions regarding heritable or real property. By the 1 & 2 Vict. c. 119, jurisdiction in all questions as to nuisance or damage arising from the undue exercise of the rights of property, and as to servitudes, was specially conferred on him. He cannot judge in actions which are declaratory of rights, or which are of a rescissory nature—for the purpose of nullifying deeds or legal proceedings. In other respects his jurisdiction extends to all actions on debt or obligation, without any limit as to the importance of the interests involved. He does not act by a jury, though it appears that such an institution was formerly connected with the civil jurisdiction of the sheriff. He has authority by special statute summarily to decide small debt cases, *i. e.* cases where the pecuniary value of the matter at issue does not exceed a hundred pounds Scots, or 8*l.* *cs.* 8*d.* When he acts in the small debts' court, he makes circuits through his county; his ordinary court is stationary. By railway statutes and other acts of local administration special functions are frequently conferred on him, and in the clauses for taking lands he is usually appointed to act as presiding judge when a jury is appointed to be empannelled. By two Acts of the 1 & 2 Vict., *viz.* caps. 114 and 119, much was done to clear up and render efficacious the practical administration of the powers of the



sheriffs. They were enabled, by indorsement, to put the writs from other sheriffdoms in force in their respective counties, and were invested with increased powers for putting their judgments and other proceedings in execution. The decisions of the sheriff, when no proceedings have been taken to enforce them, may be carried into the court of session by advocacy.

The authority of the sheriff in matters criminal is practically to a great extent measured by the proceedings of the crown lawyers, in leaving prosecutions to proceed before his court, or removing them to the Court of Justiciary. It is not very clearly to be traced how far, in old practice, the sheriff's jurisdiction was inferior to that of the Court of Justiciary: he had undoubtedly the power of punishing with death, though it has been long disused. The power of transporting, which is of comparatively late introduction, he never possessed, not having any criminal authority beyond his county. By degrees it came to be considered that the jurisdiction in the four pleas of the crown—murder, rape, robbery, and wilful fire-raising, was exclusively in the higher court. Important cases in the sheriff court are tried by jury. In more trifling matters the sheriff performs the functions of a police magistrate. In these cases the punishment must not exceed a fine of 10*l.* or sixty days' imprisonment (9 Geo. IV. c. 29). There is an intermediate system, by which the sheriff may try more important cases without a jury, but it is so encumbered with formalities—among others, a written authentication of the evidence—as not to hold out much inducement for its practical adoption.

**SHIPS.** The law of England relating to merchant ships and seamen is partly founded on principles of maritime law common to the whole civilised world, and partly on acts of parliament. The subject may conveniently be divided into four parts:—

1. That relating to the ownership of ships and its incidents.
2. To the persons employed in the navigation, &c., of merchant ships.
3. To the carriage of goods and passengers in merchant ships, the rights and

duties, &c., of freighters and passengers, of owners and their servants.

4. To the employment and wages, &c., of merchant seamen.

1. A ship belongs to those at whose expense it has been built, but it may pass into other hands by purchase, by the death or bankruptcy of the owners, or by capture by an enemy. The general law relating to chattels applies to ships with certain modifications. A sale by a party who has the mere possession of a ship can in no instance vest the property in the purchaser. The master, except when the clearest necessity exists, cannot sell the ship which he commands. Even if he be a part-owner, his sale is valid only so far as his own part is concerned; and in the case of a registered ship, even supposing him to have an authority from the owners to sell, still he must observe the forms prescribed by the registry acts. A necessity for a sale may arise when the ship is in a foreign country, where there are no correspondents of the owners, and the master is unable to proceed from want of repairs, and no money can be obtained by hypothecating her or her cargo. In case a sale under such circumstances should be litigated, the proper questions for the jury to determine are, whether such a necessity existed as would have induced the owner himself, if he had been present, to sell; and whether the actual sale has been made *bonâ fide*. No inquisition by any court abroad in such matters is conclusive upon those whose property is in question. The property in a ship is now always proved by written documents; and by means of these the property in any ship may be conveyed. But when actual possession is possible, a delivery of it is also necessary to convey a perfect title; otherwise, in the case of the bankruptcy of a seller who is allowed to remain in possession, the property may vest in the assignees. Previous to the passing of the registry acts, 4 Geo. IV. c. 41, and 6 Geo. IV. c. 110, 3 & 4 Wm. IV. c. 55, the same consequences might have ensued from the continued possession of the original owner, in the case of ships mortgaged or conveyed to trustees for the payment of debts. But by the 42nd and 43rd sections of the last act

provisions are made for a statement of the object and nature of the transfer in the book of registry, and for indorsement on the certificate of registry, by which such consequences are prevented. Enactments to the like effect are made in the bankrupt act, 6 Geo. IV. c. 16, § 72.

In order to complete a title by capture, it is necessary that a sentence of condemnation should be obtained in a court of the nation by whom the capture has been made. This court decides according to the general law of nations. [PRIZE.]

Where repairs have been done, or necessities supplied to a ship, the legal owners, upon proof of their title to the ship, are *prima facie* presumed to be liable. But this presumption may be rebutted by proof that they were done or supplied under the authority and upon the credit of another. The question to be decided, in order to determine the liability is, upon whose credit the work was done or the necessities supplied. If a ship is let out for hire, the owners are no more liable for the work done by order of the hirers, than a landlord of a house would be for work done by order of his tenant. Like observations are applicable with respect to the liability of mortgagees and charterers.

A variety of privileges of trade are confined to ships either of British build, or taken as prizes in war, &c. The first statute passed with a view to effect this object was 26 Geo. III. c. 60. Other statutes, 4 Geo. IV. c. 41, 6 Geo. IV. c. 110, and 3 & 4 Wm. IV. c. 55, were subsequently passed for the same purpose. The object of the legislature has been to confine the privileges of British ships to ships duly registered and possessing a certificate of registry. No ship is to be considered a British ship unless duly registered and navigated as such. There are some exceptions from this enactment: 1, British-built vessels under 15 tons burden, and manned by British subjects, navigating the coasts and rivers of the United Kingdom or of the British possessions abroad; 2, British-built vessels owned and manned by British subjects, not more than 30 tons burden, employed in fishing or the coast-trade about Newfoundland, Canada, &c.; and, 3, Ships

built at Honduras, which, under certain circumstances, are entitled to the privileges of British registered ships. The registry of a ship is not compulsory; the only consequence of non-registry is, that a non-registered ship can enjoy none of the privileges of a British ship. No ships can be registered which are built elsewhere than in the United Kingdom or in some of its colonies or dependencies, or have been condemned as prize, &c., or as forfeited for breach of the laws relating to the slave-trade. They must also wholly belong to British subjects who reside within the British dominions, or are members of some British factory, or agents for some house carrying on trade in the United Kingdom. A registered ship may cease to enjoy the privileges of British ships, by sale under the decree of a court for benefit of the owners in consequence of being stranded, by capture, by repair to the amount of 20s. per ton in a foreign country, unless she was sea-worthy when she left the British dominions, and the repairs were necessary for her return. Every ship is considered to be divided into 64 equal parts, and no individual or partnership firm can be registered as owner or owners of less than a 64th part. Proper officers, who generally are the officers of customs on the spot in question, are appointed for the purpose of making the registry and granting certificates of registry to the owners. The registry and certificate must be made at the port to which a ship belongs, which is that port at or near which the owner resides who takes the oath required by the act. The certificate states the name, occupation, and residence of each owner, and the share or shares which he holds, the name of the master, the name of the ship and of her port, the time and place of her build or condemnation, the name of the surveying-officer, her tonnage, and it contains a particular description of her in other respects. On the back of the certificate are stated the names of the owners, and the share or shares held by each. The name of the ship cannot afterwards be altered. When the property in a ship or any part of it is transferred, it must be done by a bill of sale, which recites the contents of the cer-

tificate. The property in the ship is not conveyed until the instrument has been produced to the proper officer at the port where the ship was registered or is about to be registered afresh. The officer then makes a registry in accordance with the altered circumstances of ownership, and indorses them on the certificate; of this he must give notice to the commissioners of customs. The transfer is rendered complete by an indorsement on the bill of sale certifying the entry in the registry and the indorsement. If the master of a ship is changed, notice of it must be given to the proper authorities, and a memorandum and indorsement of the change must be made in the registry and on the certificate. If a certificate is lost, a fresh registry must be made for the purpose of granting another; and the same form is necessary in case of any alteration in the ship which creates a variance in the particulars stated in the previous registry. The only conclusive evidence of ownership of a ship is the registry and certificate; but a production of the registry alone is not even *prima facie* evidence to render a party liable as owner of a ship. There must be some proof either that he has caused his name to be entered, or has assented to its entry; neither is it evidence to support an allegation of title by the party producing it; as, for instance, to prove interest in a plaintiff in an action on a policy of insurance.

Where a ship is the property of several part-owners, the rules of most nations have made provision for the administration of the joint property in case of a disagreement as to the management among the joint-owners. The English law contains similar provisions. The majority in value are authorised to employ the ship 'upon any probable design;' but they are only entitled to do so upon giving security to the minority in a sum equal in value to the united shares of the latter. The mode of obtaining this security is by procuring a warrant from the court of Admiralty for the arrest of the ship. After the security has been given, the minority bear no share either in the expenses or profits of the adventure. If no application of this kind is made to the court, the minority ought expressly to

give notice of their dissent both to their joint-owners and all other parties engaged in the proceedings, and they will then be relieved from the necessity of contributing in case of a loss. If they take no steps of the kind, their joint-owners, as in the case of partnership of any other chattel, will not be responsible to them for any consequences short of an absolute destruction by their means of the ship. The same proceedings are proper to be taken where the joint-owners are equally divided in opinion, or the minority have obtained possession of the ship. One part-owner may make the others liable for repairs, &c., done at his order: the usual practice, however, is for the part-owners to unite in appointing one person as a general agent for them all. This person is styled the ship's husband, and his duty, when not specially defined, is to attend to all matters connected with the outfit and freighting of the ship. It is not, however, within his authority to effect an insurance. If he makes any advances he can sue those part-owners on whose behalf those advances are made for what is due to him. In case of disagreement among the part-owners as to the settlement of the accounts concerning the expenses and earnings of a ship, the ordinary remedy is by a suit in equity.

2. *As to the persons employed in the navigation, &c., of ships.*—The master is the commander of the ship; he has the sole management of it. He is responsible for any injury done to the ship or cargo in consequence of his negligence or incompetence. The master of a British ship must be a British subject, and three-fourths of the crew must be British seamen; to this rule there are some exceptions and limitations.

The master can bind the owners by entering into engagements relative to the employment of the ship. Such engagements are of two kinds:—1. A contract by which the whole ship is let to hire during an entire voyage, which generally is accomplished by a sealed instrument called a charter-party. 2. A contract with distinct persons to convey the goods of each, in which case the ship is called a general ship. Such contracts made by the master are legally considered to be

made by the owners who employ him; and in either case they or the master are liable in respect of these contracts. If the charter-party is made in the name of the master only, it will not support a direct action upon it against the owners. Still if the contract is duly made, and under such circumstances as afford either direct proof of authority or evidence from which such authority may be inferred, the owners may be made responsible either by a special action on the case or by a suit in equity. The master can also render the owners liable for repairs done and provisions and other things furnished for her use, or for the money which he has expended for such purposes. In this case also the remedy of the creditor is against the master, unless by express contract the owners alone are rendered liable, and also against the owners. A party who has done the repairs upon a ship has a right to retain the possession of it until his demands are paid; but if he gives up possession, he is on the same footing as other creditors. When, however, the ship is abroad, and the necessary expenses cannot otherwise be defrayed, the master has the same power which the owners or part-owners to the extent of their shares under all circumstances have, to hypothecate the ship and freight as security for debts contracted on behalf of the ship. The contract of hypothecation is called a contract of bottomry, by which the ship upon its arrival in port is answerable for the money advanced, with such interest as may have been agreed on. [BOTTOMRY.] By such hypothecation the creditor acquires a claim on the ship. When the claim has been created by the master abroad, it may be enforced by suit in the Admiralty; but if the ship has been hypothecated by the owners at home, the parties can only have recourse to the common law or equity courts. The Admiralty and courts of equity will recognise the interest of the assignee of a bottomry bond, though at common law he cannot sue in his own name. When money is lent on bottomry, the owners are not personally responsible. The credit is given to the master and the ship, and the remedy is against them only. Still if a party is not content with such security, the master may also render

the owners liable. If the sums secured by the bond are not repaid, an application must be made to the Court of Admiralty, founded on the instrument of contract and an affidavit of the facts, upon which a warrant issues to arrest the ship, and the persons interested are cited to appear before the court, which then decides what is to be done. If the necessary amount of money cannot be raised by hypothecating the ship and freight, the master may also sell part of the cargo or pledge it.

The whole of the services of the master are due to his employers; and if he occupy himself on his own account, and the money earned by him is paid to his employers, they can retain it. It is his duty to give information to the owners of every matter which it may be material for them to know.

The 7 & 8 Viet. c. 112, entitled 'An Act to amend and consolidate the laws relating to Merchant Seamen and for keeping a Register of Seamen' repeals the 5 & 6 Wm. IV. c. 19, except so far as such act repeals the acts thereby repealed, and except so far as relates to the establishment, maintenance, and regulations of the office called 'The General Register Office of Merchant Seamen.' This new act contains the regulations as to the hiring of seamen, their rights and duties.

3. *Of the Carriage of Goods and Passengers, &c.* The contracts under which goods are conveyed in a ship are the contract by charter-party and the contract for their conveyance by a general ship. A charter-party is 'a contract by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places.' A charter-party is a written instrument, generally, though not necessarily, under seal, which is executed by the owners or the master, or the owners and the master of the one part, and by the merchant or his agent of the other part. The word charter-party is derived from two words *charta partita*, "divided charter," because the duplicates of the agreement were formerly written on one piece of paper or parchment and afterwards divided by cutting through some word or figure so as to enable each party

to identify the agreement produced by the other. If the charter-party is by deed, and executed by the master, and the owners are not parties to it, they cannot bring a direct action upon the instrument; indeed, the owners can never bring an action upon it unless their names appear as the parties executing it. But an action may in all cases be brought against the owners for a breach of their duties generally as ship-owners relating to matters not inconsistent with the terms of the charter-party. The charter-party states the port or ports of destination and the freight to be paid, which may be either a gross sum or so much per ton, or so much for each tub or cask of goods. If the agreement is not to pay a certain sum for the entire ship, or a certain portion of it, but to pay so much per ton, the merchant generally covenants to load a fixed amount or a full cargo. The merchant may load with his own goods or those of others, or he may underlet the ship altogether. The master or owner usually covenants "that the ship shall be tight and staunch, furnished with all necessaries for the intended voyage, ready by a day appointed to receive the cargo, and wait a certain number of days to take it on board. That after lading she shall sail with first fair wind and opportunity to the destined port (the dangers of the sea excepted), and there deliver the goods to the merchant or his assigns in the same condition they were received on board; and further, that during the course of the voyage the ship shall be kept tight and staunch, and furnished with sufficient men and other necessaries to the best of the owner's endeavours." The merchant usually covenants to load and unload the ship within a specified time.

The owner of the ship has always a lien on the goods in the ship, when the freight is to be paid before or on the delivery at their place of destination of the goods, or even, as Lord Tenterden himself decided (2 Barn. and Ald. 603), where there is "nothing to show that the delivery of the goods was to precede the payment of that hire." All difficulties may be avoided by inserting a clause in the charter-party which shall state whether it is meant that the owner

should have a lien upon the lading for his freight and expenses. The owner does not lose his right of lien by depositing the lading in a public warehouse, provided he gives notice that it is to be detained until his claim for freight is satisfied.

As to DEMURRAGE, see that article.

When a ship or a principal part of it is not let out by charter-party, the owners contract with several merchants respectively for the conveyance of their goods. A ship so employed is called a general ship. The terms of the contract appear from the instrument called a bill of lading. [BILL OF LADING.]

The master has authority over the passengers as well as over the crew. A passenger may quit the ship, but while he remains on board, he is bound in case of necessity to do work that is required for the service of the ship and to fight in her defence. If he thwart the master in the exercise of his authority, or otherwise misconduct himself, he may be put under restraint or imprisoned. If a passenger feels himself aggrieved by the manner in which he has been treated, he may bring an action against the master, and it will be for the jury, under the direction of the judge, to say whether he has any ground for complaint. In addition to this general right of action, several statutes have been passed to regulate the conveyance of passengers. The 12 & 13 Vict. c. 33, relates to ships carrying passengers from places in the United Kingdom to places out of Europe, and not within the Straits of Gibraltar. It regulates the proportion of passengers carried to the tonnage of the ship, provides security for the sea-worthiness, cleanliness, &c., and proper storing of the ship, for the presence of a surgeon and medicines, for the delivery of a list of passengers to the collector of customs at the port of departure, and attaches penalties to a violation of the regulations which it contains. Ships in the service of the crown, or the post-master-general, or the East India Company, or bound to the Newfoundland fisheries or the coast of Labrador, are excepted from the operation of the act. As to the statutes concerning passengers who emigrate, see

EMIGRATION, p. 831. The Passengers' Act of 1849 subjects the master to a penalty in case of his landing passengers at any place not contracted for, or wilfully delaying to sail; and provides for the maintenance of the passengers for 48 hours after their arrival at the destined port. The 4 Geo. IV. c. 88, regulates the carriage of passengers between Great Britain and Ireland. If a passenger fails to pay his fare, the master or owners have a lien on his luggage for the amount. It is the duty of those who have contracted to convey, to do everything and be provided with everything necessary for the safe and expeditious accomplishment of the voyage; and if, through their failure to perform these duties, any damage results to the merchant, they will be answerable for it. At the commencement of the voyage the ship must be sea-worthy, tight, staunch, and sufficient, and properly equipped with all necessary tackle. The ship must be also provided with a master and crew competent to command and work her, and also with a pilot when necessary, either from circumstances or from the law of the country. After the goods are loaded, they must be properly guarded; if they are stolen while the ship is lying in some place within a country, the master and owners are responsible.

It is the duty of the master, unless in case of any usage which relieves him from such duty, to provide things necessary for the lading of the vessel, and to stow away the goods so that they do not injure each other, or suffer from the motion or leakage of the ship. The master must procure and keep all documents, papers, clearances, &c., required by the authorities in respect of the ship and cargo; and he must abstain from taking or keeping on board contraband goods or false papers. He must wait during the time appointed for loading the vessel, and, if required, also during that appointed for demurrage. He must pay the charges and duties to which the ship is subject. The statutes 3 and 4 Wm. IV. c. 52, and 1 and 2 Vict. c. 113, contain the enactments relative to what is necessary to be done in respect of the custom-house regulations by ships carry-

ing goods from the United Kingdom beyond seas. When all things are prepared, the voyage must be commenced as soon as the weather is favourable. After the commencement of the voyage, the master is bound, without delays, deviations, or stoppages, to sail direct to the port of destination. But stress of weather, the appearance of enemies or pirates, or the presence of any urgent necessity will justify him in breaking through this rule; and he ought to do so for the purpose of succouring another ship which he finds in imminent peril or distress.

If the ship is lost, or the goods injured during a deviation, without any of these grounds of justification, the owner and master will be answerable for the loss to the merchant, even if it does not appear to have been a necessary consequence of the deviation. If the ship during the voyage is so damaged that she is unable to proceed without repairs, the master may detain the cargo, if not of a perishable character, till the repairs are made. If the cargo is of a perishable kind, he ought to tranship or sell it, as may appear the most beneficial course. He may also in all cases, where the circumstances require it, exercise a discretion as to transshipping the cargo; as, for instance, when the ship is wrecked, or in imminent danger.

*Hypothecation* of a cargo, like hypothecation of a ship, is "a pledge without immediate change of possession." The party to whom the goods are hypothecated immediately acquires a right to have possession of them if the money advanced is not paid at the time agreed on. This power of the master under circumstances of urgent necessity to sell or hypothecate the goods must be exercised with great circumspection; and the exercise of it can only be justified when it is consistent with what would have been the conduct of a discreet and able man under the circumstances. Where goods have been hypothecated, the merchant is entitled, on the arrival of the ship at its destination, to receive at his option either the sum for which they were hypothecated, or their market price at that place. During the voyage the

master is bound to take every possible care of the cargo, and to do all things necessary for its preservation, and he and the owners will be answerable for all damage which might have been avoided by the exercise of skill, attention, and forethought. When the voyage is completed, the master must see that the ship is properly moored, and all things done relative to her which are required by the law or usages of the country. The statute 8 & 9 Victoria, c. 85, contains the regulations relative to customs to which it is necessary to conform in this country. Upon payment of freight and the production of bills of lading, the cargo must be without delay delivered to the parties entitled to receive it. In the case of a general ship, the usage often prevails for the master, before delivery, to take security from the merchants that they will pay their share of average after it shall have been adjusted. [AVERAGE.] If the freight due on any goods is not ready to be paid, the master may detain the goods, or any part of them. The goods may be detained either on board the ship or in any other safe place.

When the master is compelled, by an act of parliament, to land the goods at any particular wharf, he does not thereby part with the possession of the goods, and consequently does not lose whatever right he may have to detain them. If goods are sold by the custom-house officers before the freight is paid, the master is entitled to receive the first proceeds of the sale in discharge of the freight. In foreign countries, where any accidents have occurred to frustrate or interfere with the objects of the voyage, or any one of the parties to the contract feels himself aggrieved by the conduct of any other, it is customary to draw up a narrative of the circumstances before a public notary. This narrative is called a protest, and in foreign courts is admissible in evidence, even, as it would seem, on behalf of the parties by whom it is made. In our courts it is not admissible on their behalf, but is evidence against them.

Certain circumstances operate as an excuse to the master and owners for non-fulfilment of their contract. "The act of God" is understood to mean those acci-

dents over which man has no control, such as "lightning, earthquake, and tempest." The "perils of the sea," interpreted strictly, apply only to the dangers caused merely by the elements, but these words have received a wider application, and in litigated cases the jury, after hearing evidence as to the usage which prevails among merchants, will determine what interpretation has been intended to be given to them. Juries have determined that the taking of ships by pirates is a consequence of the perils of the sea; and the verdict has been the same where the loss was caused by collision of two ships without any fault being attributable to those who navigated either of them; and also where the accident was caused wholly by the fault of those on board another ship. But all cases in which the loss happens by natural causes are not to be considered as arising from the perils of the sea. If the ship is placed in a dangerous situation by the carelessness or unskilfulness of the master, and is in consequence lost, this is not a loss from the perils of the sea, although the violence of the elements may have been the immediate cause of it. If a ship is reasonably sufficient for the purposes of the voyage, the master will not be liable for a loss arising from the perils of the sea, because a ship might have been built strong enough to resist them. By the 26 Geo. III. c. 86, owners are relieved from losses proceeding from fire, and also from the robbery, theft, or embezzlement of "gold, silver, diamonds, watches, jewels, or precious stones," unless at the time of shipping them their quality and value are made known in writing to the master or owners. The "restraint of princes and rulers" is understood to mean a really existing restraint, not one which is anticipated, however reasonably or honestly. By the civil law, and also by the ancient common law of England, the owners, in case of their being liable for any loss to the shippers, were responsible to its full amount. By the laws, however, of most nations their responsibility is now limited to the value of the ship and freight. The first statute which was passed on the subject was 7 Geo. II. c. 15, which was followed by the 26 Geo. III. c. 86, and

the 53 Geo. III. c. 159 supplied some deficiencies in the former statute, limiting the responsibility still further than the first statute had done. The last statute applies only to registered ships, and as to them may be considered as containing almost all the law upon the subject. By this act the responsibility is limited to the value of the ship and freight. It contains also provisions for the distribution, by means of an application to a Court of Equity, of the recompense due to the several parties entitled, where more than one claim, and directions as to the mode of calculating the value of the ship and freight. It does not extend to vessels employed solely in inland navigation, and none of the acts apply to lighters or gabbets. In cases where ships receive injury from collision with each other, the maritime law, which is acted on in the Court of Admiralty, differs in one respect from the law of England. Where the collision has occurred without any fault on either side, as, for instance, from a tempest, each party must bear the injury which he has sustained. Where it happens wholly from the fault of one ship only, her owners are liable, as far as the value of the ship and freight, to which, by 53 Geo. III. c. 159, their liability is limited, for the amount of injury caused by their own conduct. Thus far the laws are in accordance with each other. If the collision has been caused by the faults of both ships, then, according to the law of England, each party must sustain his own loss. But by the maritime law the loss occasioned is after computation divided equally, and the owners of each ship sustain half.

By 1 & 2 Geo. IV. c. 75, s. 52, where damage has been done by a foreign ship, a judge has power to order the ship to be arrested, until the master, owner, or consignee undertake to become defendant in any action for the damage, and give security for the damages and costs sought to be recovered.

The merchant must use the ship only for lawful purposes, and not do anything for which it may be forfeited or detained, or the owners made liable for penalties. In case of any violation of the agreement, by employment of the ship for purposes

other than those contemplated, or failure to perform the terms as to lading, &c., the amount of compensation, in case of dispute, is determined, as the circumstances of the case may require, by a jury. The words *primage and average*, which appear in the bill of lading, mean, the first, a small sum paid to the master; the second, as there used, certain charges, varying according to the usage of different places, for towing, beaconage, &c.

When an agreement for conveyance is expressed in the general form, or when there is no actual agreement, but only one implied by law from the circumstances of the case, there results from it a duty upon the master and owners, firstly, to deliver the goods at the place of destination, whether the ship is hired by the voyage or by the month. It is only by the entire performance of this duty that they can entitle themselves to the payment of freight. The parties may, however, so express the contract that the payment of all or part of the freight may be made before or during the course of the voyage. Although perhaps in such case the word *freight* is used in a sense which does not properly belong to it; strictly speaking it means only money accruing for the conveyance of goods in consequence of their delivery at the place of their destination. Where a provision is made by the contract for payment of freight at the place of shipment, the question has arisen whether the meaning of the parties was that the sum should be paid at all events on delivery of the goods on board, whatever might afterwards befall them; or whether it was merely to point out the place of payment in case the freight should become due by reason of the arrival of the goods at the port of destination. In all such cases the intention of the parties must be interpreted by the jury from the words and circumstances of the contract, and the usages of the place where it was made. The same observation will apply to cases where money has been advanced by the merchant, and it is disputed whether the money is to be considered as a loan or part payment of the freight. The owners will not lose their right to freight by a mere interruption or suspension of the voyage not caused by their own fault, as by capture and recap-



ture, if the goods be ultimately delivered at the place of destination. Where the contract of conveyance is by charter-party, under which the merchant has agreed to pay a certain sum for the whole or the principal part of a ship, that sum will be payable even although he has not supplied enough for a full lading. If he has undertaken to furnish a full cargo, and to pay a certain sum per ton or per bale, he will in like manner under similar circumstances be bound to pay for as many tons or bales as the ship, or part hired, was capable of containing, even although he has not been able to put on board any lading at all; provided the ship has thereby been forced to come home without cargo, and this has not been caused by the fault of the master or owner. In case of an action against him for such a failure of his agreement, the jury will ascertain what, under all the circumstances, is a proper compensation to the owners, allowing for the profit of the conveyance of any other goods which may have been laden by other parties. If, under a contract to furnish a full cargo, the freight to be paid for per ton, &c., the merchant is ready to furnish a full cargo, and he is prevented from doing so by the master, the merchant is still liable to pay for the cargo conveyed, and his remedy for the injury which he has suffered by such prevention is by an action on the agreement against the master or owners. Where, from the terms of the agreement, the master has a right to refuse the delivery of the goods until the freight is paid, he is not bound to do so: and if he chooses to deliver the goods to the consignee or holder of the bill of lading, &c., and cannot afterwards get the freight from them, the merchant who chartered the ship is not released from his liability to pay the freight. If, however, under such circumstances the master does not insist upon payment of the freight in cash, but takes a bill of exchange in payment, the merchant-charterer is thereby discharged, and the owners will have no claim upon him in case the bill is not paid. But if he takes the bill simply because he cannot get payment in cash, the merchant-charterer still remains liable. Payment of freight by the charterer to the owners at

their request is an answer to a demand by the master, unless the agreement has been made under seal between the charterer and the master; and even in that case a court of equity would interfere to relieve the charterer from a subsequent demand by the master. A purchaser of goods, by the transfer to him of a bill of lading which contains a contract for delivery of the goods to the consignees or their assigns on payment of freight, is liable for the freight. But the mere receipt of the goods alone will not bind the receiver to pay the freight, especially if there be an express agreement under seal for the payment of freight between the charterer and the master or owners. The Court of Admiralty, where a question of freight arises before it in the case of captured vessels, will make an equitable arrangement between the owners and merchant. Where two nations are at war, and goods belonging to a subject of one of them, on board a neutral ship, are captured by the enemy, the goods become lawful prize, and the captors, so representing the original owners, are bound to pay the full freight for them. The full freight is due, since it is by reason of the act of the captors that the goods have not reached their destination. On the other hand, if the goods of a neutral are captured on board a hostile ship, and the captors convey the goods to their destination, they are entitled to freight. But no freight is payable where the goods on board a neutral ship consist of warlike stores, or where the neutral ship was engaged in a traffic not open to the neutral nation in time of peace. Freight is not recoverable where the voyage from any cause is illegal. If the goods which have been laden are duly delivered, the owners will not be deprived of their right to freight simply because the goods have been damaged during the voyage; but if this damage proceeds from any improper act or omission by the master or owners, they will be liable to make recompense to the merchant. The merchant in this country seems to have no right to abandon the goods in lien of paying freight, if, although the ship did not arrive, they have been conveyed by other means to the place of destination, and if no charge save that of freight is claimed

upon them. But if the ship has been wrecked, and the goods are saved, and afterwards conveyed to the place of their destination, the merchant may abandon them, and is not bound to pay the freight if any expense of salvage has been incurred. If, in the case of a general ship, or where, though a ship is chartered, the hire for her is to be paid at so much per ton, &c., the merchant is bound to pay the freight of such goods as may be delivered, even though they form a part only of the whole cargo. Where the whole or principal part of the ship is let to the charterer without reference to the quantity of goods to be laden, and a part of the goods are afterwards lost by perils of the sea, it seems to have been held that no freight will be due for the remainder.

There is some doubt, however, whether this authority would be followed unless such a conclusion arose from the construction of the agreement between the parties. If the ship, without any fault in the master or owners, becomes unable to complete her voyage, and the merchant receives the goods at some other place than the place of destination, he is bound, according to the maritime law, to pay freight for the portion of the voyage which has been performed. The principle which establishes the owner's right under such circumstances to freight for a portion of the voyage has been admitted in the courts of common law in this country, but that right "must arise out of some new contract between the master and the merchant, either expressly made or to be inferred from their conduct." In the latter case, there being no direct means of ascertaining the intentions of the parties, they must be collected from the circumstances of the case considered with reference to the general principle which obtains in the maritime law. In doing this it is obvious that the degree of benefit derived to the merchant must be taken into calculation, as well as the amount of time, labour, and expense bestowed by the owner; and, therefore, when it is said that freight is to be paid according to the portion of the voyage performed, it must not be understood that time and space are the only measures

for ascertaining the portion of the freight payable.

If the master unnecessarily sell the goods, and so prevent both himself from earning the whole freight, and the merchant from accepting the goods, the merchant is entitled to the entire produce of his goods without any allowance for freight. Where a portion of the voyage only has been performed, the merchant cannot be inferred to have contracted to pay freight for that portion unless he has accepted the goods at the place short of their destination. The principles upon which the Court of Admiralty, which possesses an authority over the ship and cargo, proceeds, differ from those of courts of common law. That court exercises an equitable jurisdiction; and where no contract has either been made, or can be implied, applicable to the existing circumstances, "considers itself bound to provide, as well as it can, for that relation of interests which has unexpectedly taken place, under a state of facts out of the contemplation of the contracting parties." (Lord Stowell, in the case of the *Friends v. Creighton*, 1 Edwd., *Ad. Rep.*, 246.) If the ship has actually never commenced the voyage, the owners are not entitled to any payment whatever, although they may have incurred great expenses in lading her, and though her failure to commence the voyage is not attributable to any neglect or misconduct of theirs. Where the contract of hiring is for a voyage out and home, at so much to be paid monthly, &c., during the time the ship is employed, if by the terms of the contract the whole forms one entire voyage, no freight is due, unless the ship returns home, even though she may have delivered her cargo at the outport. But if the voyages out and home are distinct, freight will be earned on the delivery of the cargo at the outport.

*Salvage* is that reasonable compensation which persons are entitled to receive who save a ship or her cargo from loss by peril of the sea, which may be called civil salvage, or recover them after capture, which may be called hostile salvage. There is no fixed amount of salvage applicable to all cases. What is reasonable

can only be determined by a reference to the circumstances. Sir J. Nichol (3 Hag. *Ad., Rep.* 117) defines the ingredients in estimating a civil salvage service to be, "1st, enterprise in the salvors in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures, and to rescue the property of their fellow-subjects; 2nd, the degree of danger and distress from which the property is rescued, whether it was in imminent peril, and almost certainly lost if not at the time rescued and preserved; 3rd, the degree of labour and skill which the salvors incur and display, and the time occupied; lastly, the value."

Unless in cases where the services have been trifling, the salvage is generally not less than a third, and not more than one-half of the property saved. If the parties cannot agree as to the amount, the salvors may retain the property until compensation is made; or they may bring an action, or commence a suit in the Admiralty Court, against the proprietors for the amount. In case the property is retained, the proprietors may, upon tender of what they think sufficient, demand it, and, if it is refused, bring an action to recover it, in which action the jury will determine as to the amount due. The costs of the action will be paid by the salvor or the proprietors, according as the amount tendered is or is not determined to be sufficient. The Court of Admiralty has jurisdiction in those cases only where the salvage has been effected at sea, or within high and low water mark. A passenger is not entitled to salvage for his assistance during the time he is unable to quit the ship. But if he remain voluntarily on board, he may recover salvage for the assistance which he has given. Though a king's ship is bound to assist a merchant-ship in distress, it still has a claim for recompense. If freight is in progress of being earned, and afterwards does become due, salvage is payable in respect of freight also. When proceedings for salvage have been commenced in the Admiralty Court, the defendants may tender by act of the court any sum which they consider sufficient, and the court will then enter upon

an inquiry, and determine as they think fit. If the sum tendered has been sufficient, the court may hold the salvors liable to the expenses of the proceeding. Several statutes have been passed providing for what is to be done in case of ships in distress, and for the purpose of regulating and facilitating the adjustment of demands of salvage. All these acts, from the 12 Anne, c. 18, to the 8 & 9 Viet. c. 86, inclusive, were repealed in 1846 by the 9 and 10 Victoria, c. 99, and their provisions consolidated and amended.

Under the new act, receivers of Admiralty droits are to be appointed, and their names and addresses to be posted at the custom-houses and at Lloyd's. Lords of manors and others claiming a right to wreck are to give notice to a receiver. All persons finding any wreck of the sea are to report and deliver it to a receiver or officer of the customs. Receivers and officers of the customs may, by warrant, seize any such wreck as droits not reported or delivered, and thereby become entitled to salvage. Owners of wreck may, on making good their claim within twelve months, have it delivered up to them on the payment of expenses and salvage. Owners not claiming within twelve months, lords of manors and others may claim within one month following. Wrecks neither claimed by owner nor lord of the manor may be sold as droits of the Admiralty; or if perishable, or of small value, may be sold immediately, the proceeds remaining subject to claims. When vessels are in distress, or in danger of being stranded, receivers, justices, and officers of the customs and excise, are empowered to summon men, vehicles, or vessels to assist them. Penalty for neglect or refusal to assist, 100/. Carriages allowed to pass over lands near the coast for the preservation of wreck and human life, and compensation to the land occupiers to be settled in the same manner as salvage. Reasonable salvage to be allowed to persons saving ships or goods. Persons fraudulently purchasing wreck to be considered receivers of stolen goods. Masters of vessels finding wreck required to make entry in log-book, and

report to the receiver-general, and on return, to deliver the wreck to the nearest receiver; penalty for neglect, 100*l*. Pilots or others selling wreck in any foreign country guilty of felony. Dealers in marine stores not having their names on their storehouses, or cutting up cable without a permit from a receiver, liable to penalties; or if they purchase any anchor, cable, sails, or old junk, from persons under fourteen years of age. Dealers to keep an account of old stores bought, to advertise before cutting up cordage, and to allow an inspection of their books. Manufacturers subject to a penalty of 5*l*. for omitting to place their names on anchors, with a progressive number, and their weights. Hundred made liable for damages in the case of vessels wrecked being plundered by a tumultuous assemblage; and person wrongfully carrying away any wreck is liable to a penalty of 50*l*. This act extends to all parts of the United Kingdom, except Scotland.

By 9 & 10 Viet. c. 100, every sea-going steamer built of iron, and of 100 tons burthen, must be provided with a hose, capable of being connected with the engine, for extinguishing fires: penalty for default on the owner, 100*l*. By sect. 9, a steamer meeting or passing another, to pass as far as possible on the port side of such other vessel; if navigating a river or narrow channel, to keep as nearly as practicable to the fair way or mid-channel, regard being had to the tide: penalty, 50*l*.

In case of capture by the antient maritime law the ship and goods became the absolute property of the captor. The old practice in this country was, when ships were in pay of the king, to divide in certain proportions, which varied at different times, the value of the capture between the king, the owners, and the captors. Where the capture was made by ships not in the king's pay, he received no share, but a small proportion was paid to the admiral. In the reign of George II. provision was for the first time made by various statutes for the restoration of the recaptured ship and cargo to the owners, and the rates of salvage were

fixed, varying according to the length of time that had elapsed since the capture. In the reign of George III. these rates were done away with, and by various acts the rate of salvage was fixed at one-eighth of the value in the case of king's ships, and one-sixth for private ships; where the re-capture was effected by the joint operation of king's and private ships, the Court of Admiralty were to order such salvage as was reasonable. Conveying ships are entitled to salvage for the recapture of ships which accompanied them. A ship, which has once been used as a ship of war, is not subject to be restored if afterwards recaptured. If a ship is deserted by the enemy after capture and subsequently taken possession of, this is not a recapture, but those who take possession are entitled to recompense as in an ordinary case of salvage. If after the recapture the ship is again taken and condemned, the right of salvage is extinguished. Where the ship of a power in alliance with Great Britain is taken by the common enemy and afterwards recaptured by a British ship, the rule for restitution on payment of salvage is the same as in the case of the capture of a British ship; provided the allied power chooses to adopt that rule in reciprocal cases. If it does not, the same rule which is acted upon in the courts of the allied power is adopted in the British courts. If the ship of a neutral nation be taken as prize by an enemy of Great Britain and be retaken by British subjects, it is restored to the owners without salvage, unless there is reason to suppose that under the circumstances the ship would have been condemned in the courts of the capturing nation. Where it appears that such would have been the case, the British subjects are entitled to salvage. Ships and merchandise taken from pirates are subject, by 6 Geo. IV. c. 49, to a payment of one-eighth of the value.

4. *As to the Employment and Wages, &c. of Merchant Seamen.*—The 5 & 6 Wm. IV. c. 19 repealed all former acts which regulated the hiring of seamen; and the 5 & 6 Wm IV. c. 19 has been repealed, with the exceptions above stated (p. 696), by the 7 & 8 Viet. c. 112, which contains the present law relating to mer-

chant-seamen and for keeping a Register of them. This act contains sixty-four sections. This act regulates (s. 2, &c.) the agreement of hiring with seamen; (s. 6, &c.) the punishment of seamen for refusing to join the ship, or absenting themselves from it; (s. 9) forfeiture for desertion; (s. 11) the periods within which wages must be paid; (s. 15) summary mode of recovering wages not exceeding twenty pounds; (s. 17) provides for seamen being sent home when the ship is sold in a foreign port; (s. 18) regulates the supply of medicines, lime or lemon juice, and other things necessary for the health of the crew, and declares in what cases there shall be a physician, surgeon, or apothecary on board; (s. 19, &c.) provides for a general register and record office of seamen; (s. 31) provides for the disposal of the effects of seamen who die abroad elsewhere than on board a British ship, and leaving money or effects not on board such ship; (s. 32, &c.) provide for apprenticing parish boys to the sea-service; (s. 46) provides against masters of ships discharging seamen at any of her Majesty's colonies or plantations, or at any other place abroad, except as herein provided; (s. 50) provides for seamen being at liberty to leave any ship and enter the naval service of her Majesty; (s. 58) provides for offences against the property or person of any subject of her majesty, or of any foreigner, committed at any port or place, either ashore or afloat, out of the dominions of her majesty, by the master and crew; (s. 61) declares in what cases this act shall not apply.

The seaman may recover his wages by suit either in the common law courts or in the Admiralty courts. If in the former, his only remedy is against his debtor personally; if in the latter, he may proceed also against the ship itself. The Admiralty have only authority to "meddle" with "a thing done upon the sea." (13 Ric. II. st. 2, c. 5; 15 Ric. II. c. 3.) Upon the strict construction of the words of the latter of these statutes, neither the master nor the seamen would be entitled to avail themselves of the process of the Admiralty Court, the claims of both being founded, as they usually

are, upon a contract made on shore, or in a port within a country. The remedy of the master against the owners is confined to an action against them personally in the ordinary law courts; but seamen may bring a suit, in which they all may join, in the Admiralty court; and they can either arrest the ship, or proceed personally against the owners or the master. Foreign seamen may also proceed in that court for wages due under the general maritime law, but not for those the claim to which is founded on the law of some particular country. In the case of British seamen, if the contract be made by deed containing terms and conditions different from those resulting in contemplation of law from an ordinary service, the Court of Admiralty, which is considered as unfit to construe such instruments, ceases to have jurisdiction. But in order to deprive the Court of Admiralty of its jurisdiction, the defendants ought to show that the special contract is in existence. If the court does not allow the plea, and cease to entertain the case, the Court of Queen's Bench will grant a prohibition. Where the ship itself is proceeded against, the claims of the seamen for wages take precedence of all others. Proceedings in this court are subject to the same limitation of six years which applies to other like actions. When the action is brought in an ordinary court of law, it is conducted according to the rules of those courts; but the master or owners of the ship are in all cases of proceedings for wages bound to produce the contract on which the claim is founded. (*Abbott On Shipping.*)

*Marine Insurance.*—The law of Marine Insurance constitutes an important part of the general law of shipping.

A maritime insurance is a contract by which one party, who is called the insurer, in consideration of a premium agreed upon, undertakes to make good to another, who is called the insured or assured, the loss or damage which may befall his ship or goods on their passage from one place to another. The instrument containing such a contract is called, in common with instruments for fire or life insurance, a policy. It is usually not under seal, unless the insurers are an

incorporated company. Formerly the Royal Exchange Assurance Company and the London Assurance Company were the only companies for insuring ships, the legislature having given them a monopoly as against all except individual insurers. This monopoly has been abolished by 5 Geo. IV. c. 114. A great proportion of the business connected with the shipping insurance of this country is transacted at Lloyd's underwriters' establishment in the Royal Exchange, London. Insurers are commonly called underwriters, from the circumstance of their writing at the foot of the policy their names and the portion they are severally willing to take of the amount for which the merchant desires to insure.

The form of policy usually adopted is of antient origin, and rather obscure in its phraseology, but most of its terms have acquired a certain meaning from judicial interpretation, and it is therefore found convenient to retain them.

The ordinary form is found in treatises on the Law of Shipping.

The conditions of the policy may be varied according to the particular agreement between the parties.

The words in the policy, "the said ship and goods and merchandises *shall be valued at*," make this a "valued policy;" that is, a policy which enables the merchant, in case of loss, to recover the stipulated amount without proof of the value of the things insured. A policy without words expressive of an agreement between the parties as to value, is called an open policy, and leaves the question of value open.

The subjects of marine insurance are, generally speaking, whatever is put in risk, as the ship, tackle, provisions, &c., cargo, freights, profits, and money lent at bottomry or respondentia. As for the purpose of stimulating the seaman to exert himself to the utmost for the safety of the ship, a rule has been established, that he is entitled to no wages unless the adventure be completed and the ship earn freight, so an insurance which would nullify that rule is declared illegal. A seaman therefore cannot insure his wages.

The subject matter of the insurance, whether the ship only, or goods, or

freight, must be accurately described, and so must the voyage, and the times and places at which the risk is to begin and end.

The words "*lost or not lost*," in the policy, have the effect of rendering the underwriter liable, though the ship be lost before the insurance is entered into, provided the loss were not then known to the assured.

*Perils of the sea* signify losses occasioned by winds and waves, rocks, sands, &c. If the ship is run down, this is considered a peril of the sea. *Jettison* signifies the voluntary throwing of goods or of any part of the ship overboard for any justifiable reason, as either to prevent their falling into the hands of an enemy, or to save the rest of the cargo or the ship. *Barratry* denotes any sort of fraud in the master or seaman by which the owners of the ship or cargo are injured. Thus barratry may be committed by running away with the ship, by defeating or delaying the voyage with a criminal intent, or by doing any act to forfeit the insurance.

The loss or damage in every case is ascribed to the proximate cause. Where the ship is checked in her rate of sailing by sea-damage, and in consequence is overtaken by an enemy and captured, this is considered a loss by capture.

The memorandum at the foot of the policy is inserted to protect the underwriter from minute liability in respect of perishable articles, as to which it would often be difficult to say whether the damage was occasioned by intrinsic or extrinsic causes, the indemnity of the underwriter extending to the latter description of causes only. "*Warranted free from average, unless general*," protects the underwriter from making good any damage, short of a total loss, to the excepted article. A damage to any specific article itself is called a particular average. *General average*, to which the exception in the memorandum of the policy does not extend, takes place where part of the ship, as the mast, or where part of the cargo, has been thrown overboard for the common benefit, in which case the owner of the property sacrificed is entitled to contribution from all others who have pro-

party embarked in the adventure. This contribution is called general average.

The policy will be vitiated by misrepresentation or concealment on the part of the assured of any fact material to a correct estimate of the risk; and the underwriter will be discharged from liability if the ship do not proceed on the same voyage with that described, or if there be any unnecessary stopping or deviation.

(Park, *On Marine Insurance*; McCulloch's *Commercial Dictionary*, art. 'Marine Insurance.')

The system of the Navigation Act, as it is termed, had its foundation during the Protectorate; but the Act so called was the 12 Chas. II. c. 18. This act declared that no produce of Asia, Africa, or America should be imported into Great Britain except in British ships, navigated by a British subject, and having at least three-fourths of their crew composed of British seamen. It also laid higher duties on all goods imported from Europe than if they were imported in British ships. To this act many persons have attributed the great growth of British shipping. When the American colonies became independent, their ships lost the advantage which they had when the States were colonies, and their shipping was thus placed on the same footing as other foreign ships. The consequence was that American ships sailing to Great Britain came in ballast, while British ships carried merchandize both ways. But restriction is a game that two parties can play at, and accordingly the United States placed British shipping under the same disadvantages in their ports that American shipping was under in British ports. The consequence of this was that British ships sailed to America in ballast when they went to the United States to get a cargo, and American ships came to Great Britain in ballast when they wanted a British cargo. The consumer of the foreign produce in both countries accordingly paid double freight for it. This lasted till 1815, when it was agreed by treaty between Great Britain and the United States that the ships of the respective countries should be placed on the same footing in the ports of Great

Britain and the United States, and all the discriminating duties were mutually repealed. In 1822, Mr. Wallace, president of the Board of Trade, introduced four bills, which made other important alterations. The 3 Geo. IV. c. 41 repealed certain statutes relating to foreign commerce, which were passed before the Navigation Act. The 3 Geo. IV. c. 42 repealed various laws that had been passed since the Navigation Act, and also that part of the Navigation Act which enacted that goods of the growth, produce or manufacture of Asia, Africa, and America should only be imported in British ships, and that no goods of foreign growth, production, or manufacture should be brought into Great Britain from Europe in any foreign ship, except from the place of their production or from the ports from which they were usually brought, and in ships belonging to the country of production or accustomed shipment. The 3 Geo. IV. c. 43, permitted certain goods then enumerated to be brought to Great Britain from any port in Europe in ships belonging to the port of shipment. The 3 Geo. IV. c. 44, permitted the importation, subject to certain duties, into certain ports, of various articles from any foreign country in America or port in the West Indies, either in British vessels or in vessels belonging to the country or place of shipment, and such goods might be again imported to any other colony or the United Kingdom. The 3 Geo. IV. c. 45, permitted the exportation in British ships from any West India colony to any foreign port in Europe and Africa, of any goods that had been legally imported into the colony, or which were of its growth or manufacture; and it permitted the exportation of certain articles, enumerated in the act, in British ships to any such colony from any foreign port in Europe or Africa.

In 1823 Prussia retaliated, as the United States had done, which led Mr. Huskisson to propose the passing of what are called the Reciprocity Acts, 4 Geo. IV. c. 77, and 5 Geo. IV. c. 1, which empowered the king, by order in council, to authorize the importation and exportation of goods in foreign ships, from the

United Kingdom or from any other of his majesty's dominions, on the same terms as in British ships, provided it shall first be proved to his majesty and the privy council that the foreign country in whose favour such order shall be made shall have placed British ships in its ports on the same footing as its own ships. Since that time reciprocal treaties of navigation have been made with the following countries: Prussia, Denmark, Hanover, Oldenburg, Mecklenburg, Greece, Bremen, Hamburg, Lübeck, States of La Plata, Colombia, Holland, France, Sweden and Norway, Mexico, Brazil, Austria, Russia, and Portugal. That with the United States of North America, as already observed, dates from 1815.

Since the passing of the Reciprocity Acts the ship-owners have always cried out that those measures have ruined *their* interest. But they cannot possibly have injured any body else. On the contrary, the consumer has had the advantage of merchandize being carried at the cheapest rate that competition could produce. It further appears from public reports, that since the Reciprocity Acts passed there has been an enormous increase in British shipping; a fact which proves that the investment of money in ships has been at least as profitable as in other branches of industry. Lastly, we must not forget the advantages which the merchant, manufacturer, and consumer have gained by the cheaper conveyance of commodities which has been the consequence of competition among carriers.

*Navigation Act of 1849.*—Impressed by these results, and with the policy of England taking the lead in an example of maritime freedom, the Legislature has persisted in its course by a further relinquishment of exclusive privileges. The important statute of the present year, the 12 & 13 Vict. c. 29, has left little further to concede to foreigners, unless it be their participation in what may be considered a portion of the domestic carrying trade of the empire. The 8 & 9 Vict. c. 88, which gave certain privileges to British ships over foreign ones, except in cases where such foreign ships brought the produce of the countries to which they belonged, has

been wholly repealed. Other acts and parts of acts have been abrogated, as the 8 & 9 Vict. c. 89, which enacted that no vessels should be registered that were not wholly of the build of some part of the British dominions, and imposed disqualifications on ships repaired in foreign countries, or if sold to or captured by a foreigner. The privileges of free ports in British North America are abolished; also the inter-dict against certain imports, especially of tea, unless from the Cape of Good Hope and places eastward of the same to the Straits of Magellan. The additional duties on certain foreign articles, and on articles imported in foreign ships, by the 8 & 9 Vict. c. 90, are removed. At the same time the British shipowner has been relieved of the obligation imposed by 7 & 8 Vict. c. 112, to have on board a certain number of apprentices proportioned to the tonnage of his vessels.

These are the chief surrenders; the privileges retained refer to coasting voyages and colonial carriage. Except in British ships, no goods or passengers can be carried coastwise from one part of the United Kingdom to another, or to or from the islands of Guernsey, Jersey, Alderney, Sark, or Man. The same privileges of carriage are preserved to British ships in the colonies and possessions of the empire. But her Majesty in council is empowered, on the address of the Legislature or other local authority of any British colony or possession, to make regulations so as to admit other than British vessels to the inter-transit trade.

No ship is admitted to be a British ship unless duly registered and navigated as such; and every British registered ship, so long as she continues such, must be navigated during the whole of her voyage, whether with a cargo or in ballast, in every part of the world, by a master who is a British subject, and by a crew whereof three-fourths at the least are British seamen; or if the vessel be employed in a coasting voyage, or in the fisheries off the coast, then the whole of the crew must be British seamen. Exceptions, if in a foreign port the due proportion of British seamen cannot be



obtained, or the number has been reduced by casualty pending the voyage; facts that must be attested by the master to a competent officer at a British port. British ships, except coasters, may also be duly navigated, provided they have British seamen in the proportion of one to every twenty tons of the vessel's tonnage. A British master to be a natural born subject of the Queen, or, if an alien, a person who has served in the Navy, in time of war, for three years at the least.

As respects *Reciprocity*, the Queen, by order in council, is empowered by restrictions, prohibitions, or duties, to place all foreign vessels in British ports on the same footing as British vessels are placed in foreign ports. Such order in council must be published in the *London Gazette* within fourteen days after being issued, and notified to Parliament within six weeks.

*Royal Navy and Impressment.*—It is stated by Blackstone, on the authority of Foster, "that the practice of impressing and granting power to the admiralty for that purpose is of very ancient date, and hath been uniformly continued by a series of precedents to the present time, whence he concludes it to be a part of the common law." As impressment is effected by the king's commission, the power of impressment belongs to the crown. Barrington, in his "Observations on Ancient Statutes," p. 334, 5th ed., shows that the king used once to exercise the power of impressing men for the land service also, and even for his own private service, as in the case of goldsmiths. The legality of impressment is fully established, though the practice cannot be defended even on the ground of the safety of the state, until it has been shown that seamen for the royal navy cannot be procured by other means. The general rule is, that all seamen are liable to impressment. There are several legal decisions as to the question who are seamen, and who may be privileged.

Volunteer seamen are induced to enter the royal navy by higher wages; and every foreign seaman who shall have served in a ship of war, a merchant ship, or privateer, for two years during a war,

is thereby naturalized. The 7 & 8 Vict. c. 112, s. 32, enacts that overseers of the poor in the United Kingdom may put out as an apprentice in the British merchant sea service any boy who is twelve years of age and of sufficient health and strength, with his consent, who, or his parents, is or are chargeable.

The commerce of Great Britain gives regular employment to a vast body of seamen, and the habits and occupation of a large number of people on the sea-coast give them a relish and a capacity for sea service. With the great increase of the commercial navy of Great Britain, which has taken place of late years, and the prospect of still greater increase of commerce by the restrictions on trade being removed, we may always reckon on a sufficient number of seamen in the commercial navy to make up the deficiency in the royal navy in case of a sudden war. The apprenticeship system also is well devised to keep up a regular supply of young seamen. It is probable that ten or twenty thousand men might be at once drawn from the commercial navy for the royal navy on any emergency by offering them better wages, and thus the necessity of impressment might be removed. The amount of inconvenience that may be sustained by the merchant service by the withdrawal of a great number of seamen at once, is the same, whether the seamen are impressed or go as volunteers; but to the inconvenience arising from the actual withdrawal of seamen by impressment must be added the loss and inconvenience to the merchant service which may arise from seamen keeping out of the way in order to avoid being impressed.

SHIRE, from the Saxon *schyran*, to divide (whence also *to shear*), is the name of districts into which the whole of Great Britain and Ireland is divided. The word shire is in most cases equivalent to *county*, a name often substituted for it in Great Britain, and always in Ireland. The origin of this distribution of the country cannot be ascertained. In England it has been customary to attribute it to Alfred, upon the authority of a passage

in Ingulphus, the monk of Croyland, who wrote about a century and a half after the reign of that king. Asser however, the biographer of Alfred, does not mention this most important fact; and, in truth, shires were certainly known before Alfred's time. Sir Francis Palgrave shows them to be identical, in many cases, with Saxon states; thus Kent, Sussex, Essex, Norfolk, Suffolk, Middlesex, and Surrey were antient kingdoms: Lincolnshire, under the name of Lindesse, was an independent state, and Worcestershire (*Hwiccas*) was the jurisdiction of the bishop of Worcester. Another class of shires were formed out of large divisions, either for the sake of more easy management when the population of the particular district had increased, or for the sake of giving territory to an earl. Yorkshire was part of the kingdom of Deira, and Derbyshire of Mercia. Lancashire was made a county subsequently to the Conquest. On the other hand, some shires have merged in others: Winchester-shire is a part of Gloucestershire; and in the act for abolishing the palatine jurisdiction of the bishop of Durham (6 and 7 William IV., c. 19, s. 1) no less than five shires are mentioned, viz. Crainshire, Bedfordshire, Northamptonshire, Allertonshire, and Islandshire, which have long ceased to possess, if indeed they ever had, separate jurisdictions.

The uses of the division into shires may be learnt by an enumeration of the principal officers in each: 1, the lord lieutenant, to whom is entrusted its military array [**LORD LIEUTENANT**]; 2, the *custos rotulorum*, or keeper of the rolls or archives of the county [**CUSTOS ROTULORUM**], such as the county court rolls—this officer is appointed by letters-patent under the great seal, and is now always identical with the lord-lieutenant, except in counties of cities, where the high steward is usually *custos rotulorum*; 3, the sheriff, or, as he is often called, the high sheriff [**SHERIFF**]; 4, the receiver-general of taxes, who is appointed by the crown, and accounts to it for the taxes levied within his district—he also receives the county rates, and disburses them as the magistrates in quarter sessions, or as any other competent authority,

direct; 5, the coroner [**CORONER**]; 6, the justices of the peace, whose commission extends only to their own county, and who, assembled in sessions, have jurisdiction over many offences, and control over the county funds [**SESSIONS**]; 7, the under-sheriff, who is appointed by and performs nearly all the duties of sheriff; and 8, the clerk of the peace, an officer (almost always an attorney) appointed by the *custos rotulorum*, whose duty it is to file and produce recognizances, returning them, when forfeited, to the sheriff to be levied [**RECOGNIZANCE**]: he likewise prepares or files indictments to be tried at the sessions or assizes, and in general acts as the officer of the justices in quarter-sessions. To this list of officers may be added the knights of the shire, or representatives of the county in parliament.

County rates are assessments made by the justices in quarter-sessions assembled, according to estimates laid before them. [**COUNTY RATE.**]

The judicial tribunals in each county are the assize court [**ASSIZE**]; the county-court, presided over by the sheriff, and, until Magna Charta, a court of record; the hundred courts, and courts-leet. [**COURTS LEET.**]

The principal subdivision in a county is the hundred, a district which in its origin bore relation rather to the population than to any uniform geographical limits. Mr. Hallam considers it to have been a district inhabited by 100 free families, and that a different system prevailed in the northern from that of the southern counties; in proof of which he contrasts Sussex, which contains 65 hundreds, and Dorsetshire, which contains 43, with Yorkshire, which contains only 26, and Lancashire, only 6. In the counties north of the Trent, and especially in Scotland, this subdivision is often called a wapentake. Kent is divided into five lathes, which are subdivided into hundreds. That the division into hundreds was known among the Germans, even in the time of the Roman invasion, is inferred, but improperly, from two passages in Tacitus (*De Mor. Germ.*) "ex omni juventute delectos ante aciem locant—Definitur et numerus; *centeni* ex

singulis pagis sunt." And again, "Centeni singulis (principibus) adsunt ex plebe comites, consilium simul et auctoritas." "Nihil nisi armati agunt;" and hence Spelman infers the identity of the *wapentâch*, or military array (taking of weapons) and the hundred court. Sir Francis Palgrave says that the burgh was only the enclosed and fortified resort, the stockade of the inhabitants of the hundred. The subdivision of the hundred was the tithing, composed, as it is alleged, of ten free families, and having for an officer the tithing man, a head constable.

Whether in the barbarous times to which it is attributed, so elaborate a system as we have sketched could have prevailed, is at least most doubtful; but the theory is that somewhere about the time of Edgar (A.D. 950), the county was divided into tithings, of which twelve made a hundred—for the Saxon hundred meant 120, and hence perhaps the frequent use of the number 12 in our legal processes. These hundreds were presided over by their decanus, or head-borough, or hundred-man, and were represented in the shire-mote; and this aggregate body, the shire, presided over by its earl and bishop or sheriff, conducted its own internal affairs.

There are three counties-palatine, the earl of which had within his shire all the fiscal and judicial powers of the crown:—Chester, created by William the Conqueror; the duchy of Lancaster, created by Edward III.—these two have been long annexed to the crown; and Durham, heretofore governed by the bishop, but annexed to the crown by statute in 1836. In the latter year, a part of the see of Ely, which had been a royal franchise, was annexed to the crown, as Hexhamshire in Northumberland had been in the reign of Elizabeth.

SIGN-MANUAL means, in its widest sense, the signature or mark made by a person upon any legal instrument to show his concurrence in it. Before the art of writing was so commonly practised as it now is, the sign-manual or signature was usually a cross, attested either by the seal of the party containing his armorial bearings, or by the signature of another person declaring to whom the mark

belonged. The latter indeed is still the practice with persons who cannot write.

Sign-manual now, however, is used to denote the signature of a reigning prince. It is usually in this country the prince's name, or its initial letter, with the initial of his style or title in Latin. Thus the sign-manual of George IV., when prince regent, was George P. R., or G. P. R.; that of the present queen is Victoria R., or V. R.

The royal sign-manual is usually placed at the top left-hand corner of the instrument, together with the privy seal; and it is requisite in all cases where the privy seal and afterwards the great seal are used. The sign-manual must be countersigned by a principal secretary of state, or by the lords of the treasury, when attached to a grant or warrant, and it must also be accompanied by the signet or privy seal. But where the sign-manual only directs that another act shall be done, as for letters-patent to be made, it must be countersigned by some person, though not necessarily by these great officers of state. The authenticity of the sign-manual is admitted in courts of law upon production of the instrument to which it is attached. (*Comyns's Digest*.)

SIMONY. [BENEFICE, p. 351.]

SIMPLE CONTRACT debts are those which are contracted without any engagement under the seal of the debtor or of his ancestor [DEED], and which are not of record by any judgment of a court. Money due for goods bought by the debtor is the most usual of simple contract debts; and the declaration against a defendant, in an action for goods sold, usually alleges that the defendant undertook (or contracted) to pay the plaintiff the sum due. Simple contract debts are the last which are payable out of a deceased person's estate, when the assets are insufficient.

SINECURE BENEFICE. [BENEFICE, p. 341.]

SINKING FUND. [NATIONAL DEBT.]

SLANDER consists in the malicious speaking of such words as render the party who speaks them in the hearing of others liable to an action at the suit of

the party to whom they apply. The mere speaking of the defamatory words instead of the writing of them is that which constitutes the difference between Libel and Slander. [LIBEL.]

Slander is of two kinds: one, which is actionable, as necessarily importing some general damage to the party who is slandered; the other, which is only actionable where it has actually caused some special damage. The first kind includes all such words as impute to a party the commission of some crime or misdemeanour for which he might legally be convicted and suffer punishment, as where one asserts that another has committed treason, or felony, or perjury. It also includes such words spoken of a party, with reference to his office, profession, or trade, as impute to him malpractice, incompetence, or bankruptcy; as of a magistrate, that he is partial, or corrupt; of a clergyman, that "he preaches lies in the pulpit;" of a barrister, that "he is a dunce, and will get nothing by the law;" and so on: or that tend to the disherison of a party, as where it is said of one who holds lands by descent, that he is illegitimate. Where a party is in possession of lands which he desires to sell, he may maintain an action against any one who slanders his title to the lands; as by stating that he is not the owner. With respect to the second kind of slander, the law will not allow damage to be inferred from words which are not in themselves actionable, even although the words are untrue and spoken maliciously. But if, in consequence of such words being so spoken, a party has actually sustained some injury, he may maintain an action of slander against the person who has uttered them. In such case the injury must be some certain actual loss, and it must also arise as a natural and lawful consequence of speaking the words. No unlawful act done by a third person, although he really was moved to do it by the words spoken, is such an injury as a party can recover for in this action. Thus, the loss of the society and entertainment of friends, of an appointment to some office, the breach of a marriage engagement caused by the slanderer's statement, are injuries for which a party may recover damages.

But he can have no action because in consequence of such statement certain persons, to use an illustration of Lord Ellenborough's, "have thrown him into a horse-pond by way of punishment for his supposed transgression."

With respect to both kinds of slander, it is immaterial in what way the charge is conveyed, whether by direct statement, or obliquely, as by question, epithet, or exclamation. But the actual words used must be stated in the declaration, and upon the failure to prove them as stated, the plaintiff will be nonsuited at the trial: it is not sufficient to state the meaning and inference of the words. They will be interpreted in the sense in which they are commonly used, but where they are susceptible of two meanings, one innocent, the other defamatory, the innocent interpretation is to be preferred. Where words are equivocal either in their meaning or their application, a parenthetical explanation may be inserted in the declaration. This is called an *innuendo*. It may be employed to explain and define, but not to enlarge or alter, the meaning or application of the words spoken. The declaration must state the publication of the words, that is, that they were spoken in the hearing of others, and spoken maliciously. Two cannot join in bringing one action of slander, except in the case of husband and wife, or of partners for an injury done to their joint trade; nor can an action be brought against two, except a husband and wife, where slanderous words have been spoken by the wife. Where the knowledge of extraneous facts is necessary to show the application of the slander, these should be stated in the introductory part of the declaration.

In answer to an action of slander the defendant may plead that the words spoken were true, or that they were spoken in the course of a trial in a court of justice, and were pertinent to the case; or formed the subject of a confidential communication, as where a party on application *bona fide* states what he believes to be true relative to the character of a servant, or makes known facts merely for the purpose of honestly warning another in whom he is interested. (Com., Dig.,

'Action on the case for Defamation,' D. l, &c.)

**SLAVE, SLAVERY, SLAVE TRADE.** The word slavery has various acceptations, but its complete meaning is the condition of an individual who is the property of another or others. Such was the condition of the "servi," or slaves among the Romans and Greeks; such is still that of the slaves in Eastern countries, and that of the negro slaves in many parts of Africa and America. A mitigated form of this condition exists in the case of the serfs in Russia and Poland, and of a similar class in India and some other parts of Asia. The Russian and Polish serf is bound to the soil on which he is born; he may be sold or let with it, but cannot be sold away from it without his consent; he is obliged to work three or four days a-week for his master, who allows him a piece of land, which he cultivates. He can marry, and his wife and children are under his authority till they are of age. He can bequeath his chattels and savings at his death. His life is protected by the law. The slave of the Greek and Roman nations had none of these advantages, any more than the negro slave of our own times; he was bought and sold in the market, and was transferred at his owner's pleasure; he could acquire no property; all that he had was his master's; all the produce of his labour belonged to his master, who could inflict corporeal punishment upon him; he could not marry; and if he cohabited with a woman, he could be separated from her and his children at any time, and the woman and children sold. The distinction therefore between the slave and the serf is essential. The villeins (villani) of the middle ages were a kind of serfs, but their condition seems to have varied considerably according to times and localities. In the present article we treat only of the real slave of antient and modern times.

Slavery, properly so called, appears to have been, from the earliest ages, the condition of a large proportion of mankind in almost every country, until times comparatively recent, when it has been gradually abolished by all Christian states, at least in Europe. The condition of slavery

constitutes one great difference between antient and modern society. Slavery existed among the Jews: it existed before Moses, in the time of the Patriarchs; and it existed, and still continues to exist, in many parts of Asia. The "servants" mentioned in Scripture history were mostly slaves: they were strangers, either taken prisoners in war or purchased from the neighbouring nations. They and their offspring were the property of their masters, who could sell them, and inflict upon them corporeal punishment, and even in some cases could put them to death. But the Hebrews had also slaves of their own nation. These were men who sold themselves through poverty, or they were insolvent debtors, or men who had committed a theft, and had not the means of making restitution as required by the law, which was to double the amount, and in some cases much more. (*Exod. xxii.*) Not only the person of the debtor was liable to the claims of the creditor, but his right extended also to the debtor's wife and children. Moses regulated the condition of slavery. He drew a wide distinction between the alien slave and the native servant. The latter could not be a perpetual bondman, but might be redeemed; and if not redeemed, he became free on the completion of the seventh year of his servitude. Again, every fifty years the jubilee caused a general emancipation of all native servants.

The sources of the supply of slaves have been the same both in antient and modern times. In antient times all prisoners were reduced to slavery, being either distributed among the officers and men of the conquering army, or sold. When the early Æolian and Ionian colonies settled in the islands of the Ægean Sea, and on the coast of Asia Minor, it was a frequent practice with them to kill the adult males of the aboriginal population, and to keep the women and children. As, however, dealing in slaves became a profitable trade, the vanquished, instead of being killed, were sold, and this was so far an improvement. Another source of slavery was the practice of kidnapping men and women, especially young persons, who were seized on the coast, or enticed on board by the crews

of piratical vessels. The Phœnicians, and the Etruscans or Tyrrhenians, had the character of being men-stealers; and also the Cretans, Cilicians, Rhodians, and other maritime states. Another source was, sale of men, either by themselves through poverty and distress, or by their relatives and superiors, as is done now by the petty African chiefs, who sell not only their prisoners, but their own subjects, and even their children, to the slave-dealers. Herodotus (v. 6) states that some of the Thracian tribes sold their children to foreign dealers.

Among the Greeks slavery existed from the heroic times, and the purchase and use of slaves are repeatedly mentioned by Homer. The labours of husbandry were performed in some instances by poor freemen for hire, but in most places, especially in the Doric states, by a class of bondmen, the descendants of the older inhabitants of the country, resembling the serfs of the middle ages, who lived upon and cultivated the lands which the conquering race had appropriated to themselves; they paid a rent to the respective proprietors, whom they also attended in war. They could not be put to death without trial, nor be sold out of the country, nor separated from their families; they could acquire property, and were often richer than their masters. Such were the *Clarote* of Crete, the *Penestæ* of Thessaly Proper, and the *Helots* of Sparta, who must not be confounded with the *Periœci*, or country inhabitants of Laconia in general, who were political subjects of the Doric community of Sparta, without however being bondmen. In the colonies of the Dorians beyond the limits of Greece, the condition of the conquered natives was often more degraded than that of the bondmen of the parent states, because the former were not Greeks, but barbarians, and they were reduced to the condition of slaves. Such was the case of the *Kallirioi* or *Kallikurioi* of Syracuse, and of the native *Bithynians* at Byzantium. At *Heraclea* in Pontus, the *Mariandyni* submitted to the Greeks on condition that they should not be sold beyond the borders, and that they should pay a fixed tribute to the ruling race.

The Doric states of Greece had few purchased slaves, but Athens, Corinth, and other commercial states had a large number, who were mostly natives of barbarous countries. The slave population in Attica has been variously estimated as to numbers, and it varied of course considerably at different periods; but it appears that in Athens, at least in the time of its greatest power, they were much more numerous than the freemen. From a fragment of *Hyperides* preserved by *Suidas* (*v. ἀπεψηφίσαντο*), the number of slaves appears to have been at one time 150,000, who were employed in the fields and mines of Attica alone. Even the poorer citizens had a slave for their household affairs. The wealthier citizens had as many as fifty slaves to each family and some had more. We read of philosophers keeping ten slaves. There were private slaves belonging to families, and public slaves belonging to the community or state. The latter were employed on board the fleet, in the docks and arsenal, and in the construction of public buildings and roads. At the sea fight of *Arginusæ* there were many slaves serving in the Athenian fleet, and they were emancipated after the battle. Again, at *Cheronæa* the Athenians granted liberty to their slaves who served in the army.

Slaves were dealt with like any other property: they worked either on their master's account or on their own, in which latter case they paid a certain sum to their master; or they were let out on hire as servants or workmen, or sent to serve in the navy of the state, the master receiving payment for their services. Mines were worked by slaves, some of whom belonged to the lessees of the mine, and the rest were hired from the great slave proprietors, to whom the lessees paid a rent of so much a head, besides providing for the maintenance of the slave, which was no great matter. They worked in chains, and many of them died from the effect of the unwholesome atmosphere. *Nicias* the elder had 1000 slaves in the mines of *Laurium*; others had several hundreds, whom they let to the contractors for an *obolus* a-day each. At one time the mining slaves of Attica murdered their guards, took possession of

the fortifications of Sunium, and ravaged the surrounding country. (Fragment of Posidonius's Continuation of Polybius; see Boeckh's *Public Economy of Athens*, b. i.) The thirty-two or thirty-three iron-workers or sword-cutlers of Demosthenes annually produced a net profit of thirty minæ, their purchase value being 190 minæ; whilst his twenty chair-makers, whose value was estimated at 40 minæ, brought in a net profit of 12 minæ. (Demosthenes *Against Aphobus*, i.)

The antients were so habituated to the sight of slavery, that none of the Greek philosophers make any objection to its existence. Plato, in his 'Perfect State,' desires only that no Greeks should be made slaves.

The Etruscans and other antient Italian nations had slaves, as is proved by those of Vulsinii revolting against their masters, and by the tradition that the Brutii were runaway slaves of the Lucanians. The Campanians had both slaves and gladiators previous to the Roman conquest. But the Romans by their system of continual war caused an enormous influx of slaves into Italy, where the slave population at last nearly superseded the free labourers.

The Roman system of slavery had peculiarities which distinguished it from that of Greece. The Greeks considered slavery to be founded on permanent diversities in the races of men. (Aristotle, *Polit.*, i. 5.) The Romans admitted in principle that all men were originally free (*Inst.*, i., tit. ii.) by natural law (*jure naturali*), and they ascribed the power of masters over their slaves entirely to the will of society, to the "jus gentium," if the slaves were captives taken in war, whom the conquerors, instead of killing them, as they might have done, spared for the purpose of selling them, or to the "jus civile," when a man of full age sold himself. It was a rule of Roman law that the offspring of a slave woman followed the condition of the mother. (*Inst.*, i., tit. 3.) Emancipation was much more frequent at Rome than in Greece: the emancipated slave became a freedman (*libertus*), but whether he became a Roman citizen, a *Latinus*, or a *Dediticius*, depended on circumstances.

If the manumitted slave was above thirty years of age, if he was the Quiritarian property of his manumittor, and if he was manumitted in due form, he became a Roman citizen. (Gaius, i. 17.) At Athens, on the contrary, emancipation from the dominion of the master was seldom followed by the privileges of citizenship even to a limited extent, and these privileges could only be conferred by public authority. It is true, that at Rome, under the empire, from the enactment of the *Lex Aelia Sentia*, passed in the time of Augustus, there were restrictions, in point of number, upon the master's power of freeing his bondmen and raising them to the rank of Roman citizens; still in every age there was a prospect to the slave of being able to obtain his freedom.

Slaves were not considered members of the community: they had no rights, and were in most respects considered as things or chattels. They could neither sue nor be sued. When an alleged slave claimed his freedom on the plea of unjust detention, he was obliged to have a free protector to sue for him, until Justinian (*Code*, vii., tit. 1. 7, "*De adsertione tollenda*") dispensed with that formality. Slaves had no *connubium*, that is, they could not contract a Roman marriage; their union with a person of their own rank was styled *contubernium*; and even the Christian church for several centuries did not declare the validity of slave marriages. At last the emperor Basilus allowed slaves to marry and receive the blessing of the priest, and Alexius Comnenus renewed the permission. As slaves had no *connubium*, they had not the parental power (*patria potestas*) over their offspring, no ties of blood were recognised among them, except with respect to incest and parricide, which were considered as crimes by the law of nature. Though slaves were incapable of holding property they were not incapacitated from acquiring property, but what they did acquire belonged to their masters. They were allowed to enjoy property as their own, "*peculium*," consisting sometimes of other slaves, but they held it only by permission, and any legal proceedings connected with it could only be conducted in the name of the master, who was the only legal

proprietor. Until the latter period of the republic, slaves and even freedmen were not admitted into the ranks of the army. In cases of urgent public danger, such as after the defeat of Cannæ, slaves were purchased by the state and sent to the army, and if they behaved well, they were emancipated. (Livy, xxii. 57, and xxiv. 14-16.)

They were not, however, denied the rites of burial, and numerous inscriptions attest that monuments were often erected to the memory of deceased slaves by their masters, their fellows, or friends, some of which bear the letters D. M., "Diis Manibus." Slaves were often buried in the family burying-place of their masters. The "sepulchretum" or burial-vault of the slaves and freedmen of Augustus and his wife Livia, discovered in 1726 near the Via Appia, and which has been illustrated by Bianchini and Gori, and another in the same neighbourhood also belonging to the household of the early Cæsars, and containing at least 3000 urns with numerous inscriptions, which have been illustrated by Fabretti, throw much light upon the condition and domestic habits of Roman slaves in the service of great families.

With regard to the classification and occupations of slaves, the first division was into public and private. Public slaves were those which belonged to the state or to public bodies, such as provinces, municipia, collegia, decuriae, &c., or to the emperor in his sovereign capacity, and employed in public duties, and not attached to his household or private estate. Public slaves were either derived from the share of captives taken in war which was reserved for the community or state, or were acquired by purchase and other civil process. Public slaves of an inferior description were engaged as rowers on board the fleet, or in the construction and repair of roads and national buildings. Those of a superior description were employed as keepers of public buildings, prisons, and other property of the state, or to attend magistrates, priests, and other public officers, as watchmen, lictors, executioners, watermen, scavengers, &c.

Private slaves were generally distributed into urban and rustic; the former

served in the town houses, and the others in the country. Long lists of the different duties performed by slaves of each class are given by Pignorius, *De Servis et eorum apud Veteres Ministeriis*, Amsterdam, 1674; Popma, *De Operis Servorum*, *ibid.*, 1672; and Blair, *An Inquiry into the State of Slavery amongst the Romans*, Edinburgh, 1833, which is a very useful little book. For all the necessities of domestic life, agriculture, and handicraft, and for all the imaginable luxuries of a refined and licentious people, there was a corresponding denomination of slaves. Large sums were occasionally paid for slaves of certain peculiar kinds, some of which we should consider the least useful. Eunuchs were always very dear; the practice of emasculating boys was borrowed by the Romans from the Asiatics, among whom it was a trade as early as the time of Herodotus (viii. 105): it continued to the time of Domitian, who forbade it; but eunuchs continued to be imported from the East. A "morio," or fool, was sometimes sold for 20,000 nummi, or about 160 pounds. Dwarfs and giants were also in great request. Marcus Antonius paid for a pair of handsome youths 200 sesteritia, or 1600 pounds. Actors and actresses and dancers sold very dear, as well as females of great personal attractions, who were likely to bring in great gains to their owners by prostitution. A good cook was valued at four talents, or 772 pounds. Medical men, grammarians, amanuenses, anagnostæ, or readers, and short-hand writers, were in considerable request. With regard to ordinary slaves, the price varied from fifty to twenty pounds, according to their abilities and other circumstances. After a victorious campaign, when thousands of captives were sold at once on the spot for the purpose of prize-money, to the slave-dealers who followed the armies, the price sank very low. Thus in the camp of Lucullus in Pontus (Plutarch, *Lucullus*, c. 14) slaves were sold for four drachmæ, or two shillings and sevenpence, a head; but the same slaves, if brought to the Roman market, would fetch a much higher price. Home-born slaves, distinguished by the name of "vernæ," in contradistinction to "servi empti," or "venales," or



ported slaves, were generally treated with greater indulgence by their masters in whose families they had been brought up; and they generally were considered of inferior value to the imported slaves, being considered as spoilt and troublesome. The number of slaves born in Roman families appears at all times to have been far inferior to that of the imported slaves. In general the propagation of slaves was not much encouraged by masters, many of whom considered slaves born at home to cost more than those who were imported.

There was a brisk trade in slaves carried on from the coasts of Africa, the Euxine, Syria, and Asia Minor. The island of Delos was at one time a great mart for slaves, who were imported thither by the Cilician pirates. (Strabo, p. 668, Casanb.) The Illyrians procured numerous slaves for the Italian market, whom they bought or stole from the barbarous tribes in their neighbourhood. But the chief supply of slaves was derived from Asia and Africa. In most countries it was customary for indigent parents to sell their children to slave-dealers. Criminals were also in certain cases condemned to slavery, like the galley-slaves of our own times.

Both law and custom forbade prisoners taken in civil wars, especially in Italy, to be dealt with as slaves; and this was perhaps one reason of the wholesale massacres of captives by Sulla and the Triumviri. In the war between the party of Otho and Vitellius, Antonius, who commanded the army of the latter, having taken Cremona, ordered that none of the captives should be detained, upon which the soldiers began to kill those who were not privately ransomed by their friends.

In the later period of the empire free-born persons of low condition were glad to secure a subsistence by labour on the estates of the great landowners, to which, after a continued residence for thirty years, they and their families became bound by a tacit agreement under the name of *Coloni*, *Rustici*, *Adscripti*, &c. The phrase "*servi terre*," which is applied to them, shows their connection with the soil. They could

marry, which slaves could not. Though they bear a considerable resemblance to the serfs and villeins (*villani*) of the middle ages, yet there are some important points of difference and there is no evidence of any historical connection between the *Coloni* and *Villani*. The subject of the *Coloni* is discussed by Savigny, *Ueber den Römischen Colonat*; *Zeitschrift für Geschichte. Rechtswissenschaft*, vol. vi.

The customary allowance of food for a slave appears to have been four Roman bushels, "*modii*," of corn, mostly "*far*," per month for country slaves, and one Roman libra or pound daily for those in town. Salt and oil were occasionally allowed, as well as weak wine. Neither meat nor vegetables formed part of their regular allowance; but they got, according to seasons, fruit, such as figs, olives, apples, pears, &c. (Cato, Columella, and Varro.) Labourers and artisans in the country were shut up at night in a house ("*ergastulum*"), in which each slave appears to have had a separate cell. Males were kept apart from females, excepting those whom the master allowed to form temporary connections. Columella adverts to some distinction between the *ergastulum* for ordinary labourers and that for ill-behaved slaves, which latter was in fact a prison, often under ground; but generally speaking the *ergastula* in the later times of the republic and under the empire appear to have been no better than prisons in which freemen were sometimes confined after being kidnapped. The men often worked in chains. The overseers of farms and herdsmen had separate cabins allotted to them. Slaves enjoyed relaxation from toil on certain festivities, such as the *Saturnalia*.

The number of slaves possessed by the wealthy Romans was enormous. Some individuals are said to have possessed 10,000 slaves. Scaurus possessed above 4000 domestic and as many rustic slaves. In the reign of Augustus, a freedman who had sustained great losses during the civil wars left 4116 slaves, besides other property.

A master had, as a general rule, the power of manumitting his slave, and this he could effect in several forms, by *Vin-*

dicta, Census, or by Testamentum. The Lex Aelia Sentia, as already mentioned, laid various restrictions on manumission. Among other things it prevented persons under twenty years of age from manumitting a slave except by the Vindicta, and with the approbation of the Consilium, which at Rome consisted of five senators and five Roman equites of legal age (puberes), and in the provinces consisted of twenty recuperatores, who were Roman citizens. (Gaius, i. 20, 38.) The Lex Aelia Sentia also made all manumissions void which were effected to cheat creditors or defraud patrons of their rights. The Lex Furia Caninia, which was passed about A.D. 7, limited the whole number of slaves who could be manumitted by testament to 100, and when a man had fewer than 500 slaves, it determined by a scale the number that he could manumit. This Lex only applied to manumission by testament. (Gaius, i. 42, &c.)

In the earlier ages of the Republic, slaves were not very numerous, and were chiefly employed in household offices or as mechanics in the towns. But after the conquests of Rome spread beyond the limits of Italy the influx of captives was so great, and their price fell so low, that they were looked upon as a cheap and easily renewed commodity, and treated as such. The condition of the Roman slave, generally speaking, became worse in the later ages of the republic; and many of the emperors, even some of the worst of them, interfered on behalf of the slave. Augustus established courts for the trial of slaves who were charged with serious offences, intending thus to supersede arbitrary punishment by the masters, but the law was not made obligatory upon the masters to bring their slaves before the courts, and it was often evaded. By a law passed in the time of Claudius, a master who exposed his sick or infirm slaves forfeited all right over them in the event of their recovery. The Lex Petronia, probably passed in the time of Augustus, or in the reign of Nero, prohibited masters from compelling their slaves to fight with wild beasts, except with the consent of the judicial authorities, and on a sufficient case being made out against the slave.

Domitian forbade the mutilation of slaves. Hadrian suppressed the ergastula, or private prisons for the confinement of slaves; he also restrained proprietors from selling their slaves to keepers of gladiators, or to brothel-keepers, except as a punishment, in which case the sanction of a judge (judex) was required. Antoninus Pius adopted an old law of the Athenians by which the judge who should be satisfied of a slave being cruelly treated by his owner, had power to oblige the owner to sell him to some other person. The judge, however, was left entirely to his own discretion in determining what measure of harshness in the owner should be a proper ground for judicial interposition. Septimius Severus forbade the forcible subjection of slaves to prostitution. The Christian emperors went further in protecting the persons of slaves. Constantine placed the wilful murder of a slave on a level with that of a freeman; and Justinian confirmed this law, including within its provisions cases of slaves who died under excessive punishment. Constantine made also two laws, both nearly in the same words, to prevent the forcible separation of the members of servile families by sale or partition of property. One of the laws, dated A.D. 334, was retained by Justinian in his code. The Church also powerfully interfered for the protection of slaves, by threatening excommunication against owners who put to death their slaves without the consent of the judge; and by affording asylum within sacred precincts to slaves from the anger of unmerciful masters. A law of Theodosius I. authorized a slave who had taken refuge in a church to call for the protection of the judge, that he might proceed unmolested to his tribunal in order that his case might be investigated. After Christianity became the predominant religion in the Roman world, it exercised in various ways a beneficial influence upon the condition of the slaves, without however interfering, at least for centuries, with the institution of slavery itself. Even the laws of the Christian emperors which abolished the master's power of life and death over his slave were long evaded. Salvianus (*De Gubernatione Dei*, iv.)

informs us that in the provinces of Gaul, in the fifth century, masters still fancied that they had a right to put their slaves to death. Macrobius (*Saturn.*, i. 11) makes one of his interlocutors, though a heathen, expatiate with great eloquence on the cruel and unjust treatment of slaves. In Spain, in the early period of the Visigothic kings, the practice of putting slaves to death still existed, for in the 'Foro Judicum' (b. vi. tit. 5) it is said that as some cruel masters in the impetuosity of their pride put to death their slaves without reason, it is enacted that a public and regular trial shall take place previous to their condemnation. Several laws and ecclesiastical canons forbade the sale of Christians as slaves to Jews or Saracens and other unbelievers.

The northern tribes which invaded the Western empire had their own slaves, who were chiefly Slavonian captives, distinct from the slaves of the Romans or conquered inhabitants. In course of time, however, the various classes of slaves merged into one class, that of the "adscripti glebæ," or serfs of the middle ages, and the institution of Roman slavery in its unmitigated form became obliterated. The precise period of this change cannot be fixed; it took place at various times in different countries. Slaves were exported from Britain to the Continent in the Saxon period, and the young English slaves whom Pope Gregory I. saw in the market at Rome were probably brought thither by slave-dealers. Giraldus Cambrensis, William of Malmesbury, and others accuse the Anglo-Saxons of selling their female servants and even their children to strangers, and especially to the Irish, and the practice continued even after the Norman conquest. In the canons of a council held at London, A.D. 1102, it is said, "Let no one from henceforth presume to carry on that wicked traffic by which men in England have been hitherto sold like brute animals." (Wilkins's *Concilia*, i. p. 383.)

But although the traffic in slaves ceased among the Christian nations of Europe, it continued to be carried on by the Venetians across the Mediterranean in the age of the Crusades. The Venetians

supplied the markets of the Saracens with slaves purchased from the Slavonian tribes which bordered on the Adriatic. Besides, as personal slavery and the traffic in slaves continued in all Mohammedan countries, Christian captives taken by Musselmans were sold in the markets of Asia and Northern Africa, and have continued to be sold till within our own times, when Christian slavery has been abolished in Barbary, Egypt, and the Ottoman empire, by the interference of the Christian powers, the emancipation of Greece, and the conquest of Algiers by the French.

With the discovery of America, a new description of slavery and slave-trade arose. Christian nations purchased African negroes for the purpose of employing them in the mines and plantations of the New World. The natives of America were too weak and too indolent to undergo the hard work which their Spanish task-masters exacted of them, and they died in great numbers. Las Casas, a Dominican, advocated with a persevering energy before the court of Spain the cause of the American aborigines, and reprobated the system of the "repartimientos," by which they were distributed in lots like cattle among their new masters. But it was necessary for the settlements to be made profitable in order to satisfy the conquerors, and it was suggested that negroes from Africa, a more robust and active race than the American Indians, might be substituted for them. It was stated that an able-bodied negro could do as much work as four Indians. The Portuguese were at that time possessed of a great part of the coast of Africa, where they easily obtained by force or barter a considerable number of slaves. The trade in slaves among the nations of Africa had existed from time immemorial. It had been carried on in antient times: the Garamantes used to supply the slave-dealers of Carthage, Cyrene, and Egypt with black slaves which they brought from the interior. The demand for slaves by the Portuguese in the Atlantic harbours gave the trade a fresh direction. The petty chiefs of the interior made predatory incursions into each other's territories, and sold their

captives, and sometimes their own subjects, to the European traders. The first negroes were imported by the Portuguese from Africa to the West Indies in 1503, and in 1511 Ferdinand the Catholic allowed a larger importation. These, however, were private and partial speculations; it is said that Cardinal Ximenes was opposed to the trade because he considered it unjust. Charles V., however, being pressed on one side by the demand for labour in the American settlements, and on the other by Las Casas and others who pleaded the cause of the Indian natives, granted to one of his Flemish courtiers the exclusive privilege of importing 4000 blacks to the West Indies. The Fleming sold his privilege for 25,000 ducats to some Genoese merchants, who organised a regular slave-trade between Africa and America. As the European settlements in America increased and extended, the demand for slaves also increased; and all European nations who had colonies in America shared in the slave-trade. The details of that trade, the sufferings of the slaves in their journey from the interior to the coast, and afterwards in their passage across the Atlantic—their treatment in America, which varied not only according to the disposition of their individual masters, but also according to different colonies,—are matters of notoriety which have been amply discussed in every country of Europe during the last and present centuries. It is generally understood that the slaves of the Spaniards, especially in Continental America, were the best treated of all. But the negro slaves in general were exactly in the same condition as the Roman slaves of old, being saleable, and punishable at the will of their owners. Restrictions, however, were gradually introduced by the laws of the respective states, in order to protect the life of the negro slave against the caprice or brutality of his owner. In the British colonies, especially in the latter part of the last century and the beginning of the present, much was done by the legislature; courts were established to hear the complaints of the slaves, flogging of females was forbidden, the punishment of males was also limited within certain

bounds, and the condition of the slave population was greatly ameliorated. Still the advocates of emancipation objected to the principle of slavery as being unjust and unchristian; and they also appealed to experience to show that a human being cannot be safely trusted solely to the mercy of another.

But long before they attempted to emancipate the slaves, the efforts of philanthropists were directed to abolish the slave traffic, which desolated Africa, wholly prevented its advance in civilization, and encouraged the maltreatment of the negroes in the colonies, by affording an unlimited supply, and making it not the planter's interest to keep up his stock in the natural way. The attention of mankind was first effectually awakened to the horrors of this trade by Thomas Clarkson. His labours, with the aid of the zealous men, chiefly Quakers, who early joined him, prepared the way for Mr. Wilberforce, who brought the subject before parliament in 1788, and although, after his notice, the motion, owing to his accidental illness, was first brought forward by Mr. Pitt, Mr. Wilberforce was throughout the great parliamentary leader in the cause, powerfully supported in the country by Thomas Clarkson and others, as Richard Phillips, George Harrison, William Allen, all of the Society of Friends, Mr. Stephen, who had been in the West Indies as a barrister, and Mr. Z. Macaulay, who had been governor of Sierra Leone, and had also resided in Jamaica. A bill was first carried (brought in by Sir W. Dolben) to regulate the trade until it could be abolished, and this in some degree diminished the horrors of the middle passage. But the question of abolition was repeatedly defeated, until 1804, when Mr. Wilberforce first carried the bill through the Commons; it was thrown out in the Lords, and next year it was again lost even in the Commons. Meanwhile the capture of the foreign colonies, especially the Dutch, during the war, frightfully increased the amount of the trade, by opening these settlements to British capital; and at one time the whole importation of slaves by British vessels amounted to nearly 60,000 yearly, of which about a third was for the supply

of our old colonies. At length, in 1805, an order in council prohibited the slave-trade in the conquered colonies. Next year the administration of Lord Grenville and Mr. Fox carried a bill through, prohibiting British subjects from engaging in the trade for supplying either foreign settlements or the conquered colonies. A resolution moved by Mr. Fox, the last time he took any part in public debate, was also carried in 1806, pledging the Commons to a total abolition of the trade early next session, and this was, on Lord Grenville's motion, adopted by the Lords. Accordingly next year the General Abolition Bill was brought in by Lord Howick (afterwards Earl Grey), and being passed by both houses, received the royal assent on the 25th of March, 1807. This Act prohibited slave-trading from and after the 1st of January, 1808; but as it only subjected offenders to pecuniary penalties, it was found that something more was required to put down a traffic the gains of which were so great as to cover all losses by capture. In 1810 the House of Commons, on the motion of Mr. Brougham, passed unanimously a resolution, pledging itself early next session effectually to prevent "such daring violations of the law;" and he next year carried a bill making slave-trading felony, punishable by fourteen years' transportation, or imprisonment with hard labour. In 1824 the laws relating to the slave-trade were consolidated, and it was further declared to be piracy, and punishable capitally, if committed within the Admiralty jurisdiction. In 1837 this was changed to transportation for life, by the acts diminishing the number of capital punishments. Since the Felony Act of 1811, the British colonies have entirely ceased to have any concern in this traffic. If any British subjects have engaged in it, or any British capital has been embarked in it, the offence has been committed in the foreign trade.

The Duke of Wellington, while ambassador at Paris, in 1814, used every effort to obtain from the restored Bourbon government a prohibition of the traffic in slaves; but the French West Indian interest and commercial jealousy of England frustrated all his attempts. The

first French law abolishing the slave-trade was a decree issued by Napoleon on the 29th of March, 1815, during the Hundred Days, after his return from Elba. It prohibited any vessel from fitting out for the trade, either in the ports of France or in those of her colonies; and the introduction or sale in the French colonies of any negro obtained by the trade, whether carried on by French subjects or foreigners. The influence of Great Britain was again strenuously exerted at the peace in 1815, to obtain the concurrence of foreign powers in the abolition; and the object has been steadily kept in view by this country, and every opportunity of forwarding it taken advantage of, down to the present time. The consequence has been that now nearly all the powers in Europe and America have passed laws, or entered into treaties, prohibiting the traffic.

To the General Treaty signed by the representatives of Austria, France, Great Britain, Portugal, Prussia, Russia, Spain, and Sweden, assembled in Congress at Vienna, on the 9th of June, 1815, was annexed, as having the same force as if textually inserted, a Declaration, signed at the same place by the Plenipotentiaries of certain of the powers, on the 8th of February preceding, to the following effect:—that, seeing several European governments had already, virtually, come to the resolution of putting a stop to the slave-trade, and that, successively, all the powers possessing colonies in different parts of the world had acknowledged, either by legislative acts, or by treaties or other formal engagements, the duty and necessity of abolishing it; and that by a separate article of the late treaty of Paris (30th May, 1814), Great Britain and France had engaged to unite their efforts at this Congress of Vienna to induce all the powers of Christendom to proclaim its universal and definitive abolition; the members of the Congress now declared, in the face of Europe, that they were animated with the sincere desire of concurring in the most prompt and effectual execution of this measure by all the means at their disposal. And this Declaration was renewed by the Plenipotentiaries of Austria, France, Great Bri-

tain, Prussia, and Russia, assembled in Congress at Verona, in resolutions adopted in a conference held on the 28th of November, 1822; in which, however, it is admitted that, "notwithstanding this declaration, and in spite of the legislative measures which have in consequence been adopted in various countries, and of the several treaties concluded since that period between the maritime powers, this commerce, solemnly proscribed, has continued to this very day; that it has gained in activity what it may have lost in extent; that it has even taken a still more odious character, and more dreadful from the nature of the means to which those who carry it on are compelled to have recourse."

The following will be found, we believe, to be a correct and complete list of the treaties and conventions for the suppression of the slave-trade that have been made by this country with other states since the general peace:—

In 1814, with France, by Additional Articles to the Definitive Treaty of Peace signed at Paris 30th May (engaging that the slave-trade should be abolished by the French government in the course of five years); and with the Netherlands, by treaty of London, 13th August. Its abolition had also been stipulated in the Treaty of Kiel, concluded with Denmark on the 14th of January.

In 1815, with France, by Additional Article to Definitive Treaty signed at Paris 20th November (by which the two powers, having each already, in their respective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in the slave-trade, engage to renew their efforts, through their ministers at the courts of London and Paris, for its entire and definitive abolition); and with Portugal, by Treaty signed at Vienna 22nd January (referring to Treaty of Alliance concluded at Rio de Janeiro 19th February, 1810, in which the Prince Regent of Portugal had declared his determination to adopt the most efficacious means for bringing about a gradual abolition of the slave-trade; and making it now unlawful for any of the subjects of the crown of Portugal to purchase slaves, or to carry on

the slave-trade, on any part of the coast of Africa to the northward of the equator).

In 1817, with Portugal, by Convention signed at London 28th July (prohibiting universally the carrying on of the slave-trade by Portuguese vessels bound for any port not in the dominions of his Most Faithful Majesty; and restricting it in other circumstances); with Portugal, by Separate Article, signed at London 11th September (referring to arrangements to be adopted "as soon as the total abolition of the slave-trade, for the subjects of the crown of Portugal, shall have taken place"); with Spain, by Treaty signed at Madrid 23rd September (by which his Catholic Majesty engages that the slave-trade shall be abolished throughout the entire dominions of Spain on the 30th of May, 1820, and that in the mean time it shall not be lawful for any of the subjects of the crown of Spain to purchase slaves, or to carry on the slave-trade, on any part of the coast of Africa to the north of the equator, or in vessels bound for any port not in the dominions of his Catholic Majesty; and by which the restrictions under which the trade may be carried on in other circumstances are specified); and with Radama, king of Madagascar and its dependencies, by Treaty signed at Tamatave 23rd October.

In 1818, with the Netherlands, by Treaty signed at the Hague 4th May (specifying restrictions under which the reciprocal right of visitation and search is to be exercised).

In 1820, with Madagascar, by Additional Articles signed at Tananarivoux 11th October.

In 1822, with Inaum of Muscat, by Treaty signed at Muscat 10th September; with Netherlands, by Explanatory and Additional Articles, signed at Brussels 31st December; and with Spain, by Explanatory Article signed at Madrid 10th December.

In 1823, with Netherlands, by Additional Article signed at Brussels 25th January; with Portugal, by Additional Articles signed at Lisbon 15th March and with Madagascar, by Additional Article signed at Tamatave 31st May.

In 1824, with Sweden, by Treaty of

Stockholm, 6th November (arranging reciprocal right of visitation by the ships of war of the two countries)

In 1826, with Brazil, by Treaty of Rio de Janeiro, 23rd November (renewing, on the separation of that empire from Portugal, the stipulations of the treaties subsisting with the latter power).

In 1831, with France, by Convention of Paris, 30th November (stipulating mutual right of search, within certain seas, by a number of ships of war to be fixed every year for each nation by special agreement).

In 1833, with France, by Supplementary Convention of Paris, 22nd March (further regulating the right of visitation by duly authorized cruisers).

In 1834, with Denmark, by Treaty of Copenhagen, 26th July (containing the accession of his Danish Majesty to the Conventions between Great Britain and France of 1831 and 1833); with Sardinia, by Treaty of Turin, 8th August (containing accession of that power to same conventions); and with Sardinia, by Additional Article, signed at Turin, 8th December (respecting place of landing of negroes found in vessels with Sardinian flag).

In 1835, with Spain, by Treaty of Madrid, 28th June (abolishing slave-trade on part of Spain henceforward, totally and finally, in all parts of the world; and regulating a reciprocal right of search); and with Sweden, by Additional Article to Treaty of 1824, signed at Stockholm 15th June.

In 1837, with Tuscany, by Convention signed at Florence 24th November, containing accession of the Grand Duke of Tuscany to French Conventions of 1831 and 1833); with Hanse Towns, by Convention signed at Hamburg 9th June (to same effect); and with Netherlands, by Additional Article to Treaty of 1818, signed at the Hague 7th February.

In 1838, with Kingdom of the Two Sicilies, by Convention signed at Naples 14th February (containing accession of his Sicilian Majesty to French Conventions of 1831 and 1833).

In 1839, with Republic of Venezuela, by Treaty signed at Caracas 15th March (abolishing for ever the traffic in slaves,

so far as it consists in the conveyance of negroes from Africa; expressing the determination of Venezuela to preserve in force the provisions of a law passed in February, 1825, declaring Venezuelans found engaged in that trade to be pirates and punishable with death, and regulating a mutual right of visitation); with Chile, by Treaty signed at Santiago 19th January; with Uruguay, by Treaty signed at Montevideo 13th July; with Argentine Confederation, by Treaty signed at Buenos Ayres 24th May; and with Hayti, by Convention signed at Port-au-Prince 23rd December.

In 1840, with Bolivia, by Treaty signed at Sucre 25th September; and with Texas, by Treaty signed at London 16th November.

In 1841, with France, by Treaty signed at Paris 20th December, which however the French government afterwards refused to ratify; with Mexico, by Treaty signed at Mexico 24th February; and with Austria, Prussia, and Russia, by Treaty signed at London 20th December.

In 1842, with the United States of North America, by Treaty signed at Washington 9th August (stipulating that each party shall maintain on the coast of Africa a naval force, carrying in all not less than eighty guns, "to enforce separately and respectively, the laws, rights, and obligations of each of the two countries for the suppression of the slave-trade; the said squadrons to be independent of each other," but "to act in concert and co-operation, upon mutual consultation, as exigencies may arise"); with the Argentine Republic; and with the Republic of Hayti.

In 1842, with Portugal, by Treaty signed at Lisbon 3rd July.

In 1845, with Brazil; and with France, by a Convention signed at London on the 29th of May (by which each power is to keep up an equal naval force on the western coast of Africa, and the right of visitation is to be exercised only by cruisers of the nation whose flag is carried by the suspected vessel).

The History of the Abolition is to be found in the work under that title by T. Clarkson (edition 1834), and the state of the law, as well as the treatment of slaves

practically in the colonies, is most fully treated of in a work on that subject by Mr. Stephen. The writings of the late Sir John Jeremie also contain much useful information on the condition of slavery in the British colonies just before the Emancipation Act. T. Clarkson's other works on the nature of the traffic, which first exposed it to the people of this country, were published in 1787.

The slave-trade was suppressed, but slavery continued to exist in the British colonies. In 1834 the British parliament passed an act by which slavery was abolished in all British colonies, and twenty millions sterling were voted as compensation money to the owners. This act (3 & 4 Wm. IV. c. 73) stands prominent in the history of our age. No other nation has imitated the example. The emancipated negroes in the British colonies were put on the footing of apprenticed labourers. By a subsequent act (1 Vic. c. 19) all apprenticeships were to cease after the 1st of August, 1840, but the day was anticipated in all the West Indian colonies by acts of the colonial legislatures. Slavery exists in the French, Dutch, Spanish, and Portuguese colonies, and in the southern states of the North American Union. The new republics of Spanish America, generally speaking, emancipated their slaves at the time of the revolution. As the slave population in general does not maintain its numbers by natural increase, and as plantations in America are extended, there is a demand for a fresh annual importation of slaves from Africa, which are taken to Brazil, Cuba, Puerto Rico, and Monte Video. In a recent work, 'The African Slave-Trade and its Remedy,' by Sir T. Fowell Buxton (who, after Mr. Wilberforce's retirement, took a most active part in parliament on the subject of slavery), it is calculated, apparently on sufficient data, that not less than 150,000 negro slaves are annually imported from Africa into the above-mentioned countries in contravention to the laws and the treaties existing between Great Britain and Spain and Portugal, the local authorities either winking at the practice or being unable to prevent it. Since the slave-trade has been declared to be illegal the sufferings

of the slaves on their passage across the Atlantic have been greatly increased, owing to its being necessary for masters of slave-traders to conceal their cargoes by cooping up the negroes in a small compass, and avoiding the British cruisers; they are often thrown overboard in a chace. There is a considerable loss of life incident to the seizing of slaves by force in the hunting excursions after negroes, and in the wars between the chieftains of the interior for the purpose of making captives. There is a loss on their march to the sea-coast; the loss in the middle passage is reckoned on an average at one-fourth of the cargo; and, besides this, there is a further loss, after landing, in what is called the "seasoning" of the slaves. The Portuguese and Brazilian flags have been openly used, with the connivance of the authorities, for carrying on the slave-trade. The Spanish flag has also been used, though less openly, and with greater caution, owing to the treaty between England and Spain which formally abolishes the slave-trade on the part of Spain. A mixed commission court of Spaniards and British exists at Havana to try slavers; but pretexts are never wanting to elude the provisions of the treaty. There seems indeed to be a great difficulty in obtaining the sincere co-operation of all Christian powers to put down the slave-trade effectually, although it is certain that in all but the Portuguese and Spanish settlements the traffic has now almost entirely ceased.

Besides the slave-trade on the Atlantic, there is another periodical exportation of slaves by caravans from Soudan to the Barbary states and Egypt, the annual number of which is variously estimated at between twenty and thirty thousand. There is also a trade carried on by the subjects of the Imaum of Muscat, who export slaves in Arab vessels from Zanzibar and other ports of the eastern coast of Africa, to Arabia, Persia, India, Java, and other places. In a despatch, dated Zanzibar, May, 1839, Captain Cogan estimates the slaves annually sold in that market to be 50,000. The Portuguese also export slaves from their settlements on the Mozambique coast, to Goa, Diu, and their other Indian possessions.



By a law of the Korán, which, however, is not always observed in all Mohammedan countries, no Mussulman is allowed to enslave one of his own faith. The Moslem negro kingdoms of Soudan supply the slave-trade at the expense of their pagan subjects or neighbours, whom they sell to the Moorish traders. Mohammedan powers will probably never suppress this trade of their own accord.

There is a considerable internal slave-trade in the United States of North America. Negroes are bred and sold in Maryland and Virginia, and some other of the slave-holding states, and carried to the more fertile lands of Alabama, Louisiana, and other southern states.

It is maintained by some that the African slave-trade cannot be effectually put down by force, and that the only chance of its ultimate suppression is by civilizing central Africa, by encouraging agricultural industry and legitimate branches of commerce, and at the same time spreading education and Christianity; and also by giving the protection of the British flag to those negroes who would avail themselves of it. It is certain that if other countries will not exert themselves, the abolition must be postponed to this remote period. The Africans sell men because they have no other means of procuring European commodities, and there seems no doubt that one result of the slave-trade is to keep central Africa in a state of barbarism.

The amount of the slave population now existing in America is not easily ascertained. By the census of 1835 Brazil contained 2,100,000 slaves. The slaves in Cuba, in 1826, were, according to Humboldt, about 260,000. In the United States the number of slaves was 2,487,355 by the census of 1840, which is 478,324 more than the number according to the census of 1830.

Societies for the ultimate and universal abolition of slavery exist in England, France, and the United States, and they publish their Reports; and a congress was held in London, June, 1840, of delegates from many countries to confer upon the means of effecting it. The American Society has formed a colony called Liberia, near Cape Mesurado, on the west

coast of Africa, where negroes who have obtained their freedom in the United States are sent, if they are willing to go. The English government has a colony for a similar purpose at Sierra Leone, where negroes who have been seized on board slavers by English cruisers are settled.

SMALL DEBTS. [INSOLVENCY; REQUESTS, COUNTY COURTS OF.]

SMUGGLING is the clandestine introduction of prohibited goods; or the illicit introduction of goods by the evasion of the legal duties. Excessive duties present a temptation to men to evade them; and the law loses a great part of its moral influence when it first tempts to violation of it and then punishes the offence. In parts of a country where a "free trade" is extensively carried on, the smuggler is rather a popular person than otherwise; in some countries, as in Spain, still more than in England. His neighbours do not usually regard his mode of acquiring a livelihood disgraceful, but rather look upon him as a benefactor who supplies them with necessities and luxuries at a cheap rate. "To pretend," says Adam Smith, "to have any scruple about buying smuggled goods would in most countries be regarded as one of those pedantic pieces of hypocrisy which, instead of gaining credit with anybody, serve only to expose the person who pretends to practise them to the suspicion of being a greater knave than the rest of his neighbours." This is probably rather too strongly expressed; but many persons even attach a fictitious value to goods which have been smuggled, on account of their cheapness and supposed excellence; and indeed articles which have duly passed through the custom-house are frequently offered for sale as contraband. It is the crimes and the moral evils which are the offspring of smuggling that are to be dreaded rather than smuggling itself. The true remedy is a wise tariff. It annihilates a traffic which no ingenuity can ever put down; for all experience proves that so long as a profit can be made by smuggling sufficiently high to counterbalance the necessary risk, it will not fail to flourish. The decrees of Berlin and Milan, instead of annihilating commerce, only forced it

into extraordinary channels. Silk from Italy, for example, instead of being received in England by the most direct means, often arrived by way of Archangel and Smyrna; in the former instance being two years, and in the latter twelve months on its passage. The slave-trade is another instance of the impossibility of putting a stop to any traffic which is a source of great profit. The slave-traders of the Havanna gave from 35 to 40 per cent. as a premium of insurance on their African risks; but at this rate the assurance companies did not realise a profit, though they sustained no serious loss. This proves that nearly two out of every three adventurers are successful; and as one out of three would at least have covered all loss, the difference makes a profit of at least cent. per cent. to the slave-dealer. Until this profit be reduced, the slave-trade cannot be effectually suppressed. (Turnbull's *Cuba*, 1840.) Whenever duties exceed 30 per cent. ad valorem, it is impossible to prevent a contraband trade.

We have only to examine the tariff of any country to know if smuggling is practised; and if a bad system of commercial policy has been long pursued, there the smuggler will be found. The *contrabandista* of Spain figures in novels and tales of adventure. In no country is the illicit trade so general and extensive. The exports to Gibraltar from England considerably exceed a million sterling per annum, and a very large proportion of British goods is introduced by smugglers into the interior. Mr. Porter states (*Progress of the Nation*, ii. 111) that nearly the whole of the tobacco imported into Gibraltar, amounting to from 6 to 8 million lbs. per annum, is subsequently smuggled into Spain, where the article is one of the royal monopolies. On the French frontier the illicit trade is equally active.

The vicinity of France and England, and the injudicious character of their respective tariffs, have encouraged smuggling to a large extent on both sides of the Channel. Spirits, tea, tobacco, and silk goods, and more particularly brandy, from the high duties imposed on it in this country, have constituted the most im-

portant articles of smuggling from France to England. The total amount of duties evaded in 1831 by the smuggling of French goods into the United Kingdom was estimated to exceed 800,000*l.*, exclusive of tobacco, "whole cargoes of which are sometimes introduced from the French bonding warehouses into Ireland." (*Report on the Commercial Relations between France and England*, by Mr. Poulett Thomson (late Lord Sydenham) and Dr. Bowring.) English goods are also largely smuggled into France. The extensive land frontier of France, and the offices for collecting the *octroi* duties in inland towns, give rise to some peculiarities in the smuggling-trade in France. It is not sufficient to land merchandise on the coast, as in England, but it has to pass the local custom-houses at the barriers of the large towns. This adds greatly to the difficulty and expenses of smuggling. It is stated that in 1831 the premium on landing English woollens on the French coast was 55 per cent.; at the barriers of Paris 63 per cent.; and within the walls 10 per cent. additional; making in all 73 per cent.; the premium on cotton goods being 65 per cent. English goods are chiefly introduced by the Belgian frontier, and the smugglers have their depôts at Cambrai, St. Quentin, Ypres, Tournay, Mons, and other towns in the adjacent departments. In the Report of 1831, already quoted, it is stated that in that year the amount of British goods smuggled into France by this frontier exceeded 2,000,000*l.* in value; but if the ports on the Channel were included (of which no estimate is given), this amount would be greatly increased. Cotton-twist is the most important article in the illicit trade. Cotton-yarns, when once lodged in the manufacturer's warehouse, cannot be seized, and in consequence of the article being essential to the progress of manufacturing industry in France, the government, instead of reducing the duty, in some degree connives at its illicit introduction.

The nature of the frontier by which a country is bounded necessarily exercises considerable influence on the character of its tariff. It would, for example, be nearly impossible to prevent the smug-

gling of British goods into the United States on the Canadian frontier, if the duties on importation were excessive.

In 1822 the cost of preventing smuggling in England was enormous. The Preventive Service and the Coast Blockade were organized for this purpose, and were aided by a fleet of fifty-two revenue cruisers. In 1822 and 1823 there were captured on the English coast 52 vessels and 385 boats engaged in smuggling. For the half-year ending April, 1823, the cost of this department of the public service amounted to 227,145*l.*, and the seizures were valued at 67,000*l.* The Coast Blockade consisted of 1500 officers and seamen of the royal navy, who were employed on shore under the orders of the Admiralty; and the Coast Guard was under the authority of the Board of Customs. In 1832 upwards of 181,000*l.* had been expended in building cottages for the officers and men of the Coast Guard in Kent and Sussex. Lord Congleton estimated the total annual cost of protecting the revenue in 1831 at from 700,000*l.* to 800,000*l.*

For several years frequent conflicts took place between the officers of the revenue and smugglers, who were generally aided by the country-people. In 1830 there were 116 persons under confinement in England, and 64 serving in the navy as a penalty for smuggling offences. The counties on the Scottish border were at one period rapidly becoming demoralized by smuggling, the duties on spirits being much higher in England than in Scotland. In two years 163 informations were laid in the counties of Northumberland and Cumberland for smuggling spirits. The duties being reduced more nearly to an equality, these evils ceased on the border; and the quantity of spirits charged with duty in Scotland rose from 2½ million gallons in 1822, to nearly six million gallons in 1825. The reduction of the duties on silks, tea, and other articles, has done more to repress smuggling than all the efforts of the revenue officers aided by a large armed force. In 1841 the number of persons under confinement in England for offences against the Customs laws was 65, all for periods under six months, with two ex-

ceptions; in Ireland there were none under confinement.

The direct cost incurred for the protection of the Customs revenue was as follows in 1840:—Harbour vessels, 7250*l.*; Cruisers, 118,543*l.*; Preventive Water-Guard, 349,474*l.*; Land Guard, 19,662*l.*: total, 494,930*l.* The Board of Excise employs cruisers for the protection of the revenue collected under its authority, the cost of which amounted to 5458*l.* in 1840; and also a force in Ireland called the Revenue Police, whose maintenance in the above year cost 42,095*l.* The total charge for collecting and protecting the Customs and Excise revenues of the United Kingdom was 2,309,611*l.*; namely, 1,286,353*l.*, or 5*l.* 8*s.* 8½*d.* per cent., for the Customs; and 1,023,258*l.*, or 6*l.* 10*s.* 11½*d.* per cent., for the Excise. In 1835 the number of persons employed in the department of the Customs was 11,600; and in the Excise 6072. The present Acts relating to smuggling are 3 & 4 Wm. IV. c. 53, 4 & 5 Wm. IV. c. 13, and the 8 & 9 Vict. c. 87, s. 63.

SOCCAGE (more correctly *socage*) in its original signification, according to Bracton, Littleton, and others, is service rendered by a tenant to his lord by the soc (soke) or ploughshare. The term was afterwards extended to all services rendered which were of an ignoble or non-military character, and were fixed in their nature and quality. The certainty of the services to be rendered distinguished socage tenure from tenure in chivalry, or by knight's service, on the one hand, and from tenure in pure villenage by arbitrary service, on the other; and therefore Littleton says, § 118, "A man may hold of his lord by fealty [FEALTY] only; and such tenure is a tenure in socage; for every tenure which is not a tenure in chivalry is a tenure in socage."

Socage is said by old writers to be of three kinds: socage in frank tenure; socage in ancient tenure; and socage in base tenure. (*Old Tenures*, 125, 126; *Old Natura Brevium*, title *Garde*.) The second and third kinds are now called respectively tenure in ancient demesne and copyhold tenure. The first kind is called free and common socage, to distinguish it from the two others, though as the term

socage has long ceased to be applied to the two latter, socage and free and common socage now mean one and the same thing.

Besides fealty, which the tenant in socage, like every other tenant, is bound to do when required, the tenant in socage, or, as he was formerly called, the socager or sockman, is bound to give his attendance at his lord's court-baron, if the lord holds a court-baron either for a manor [MANOR] or for a seignior in gross. A tenant in socage may hold by fealty only (Littleton, § 130), for fealty is a service. If the tenant in socage holds by fealty and certain rent to pay yearly, &c., the lord shall have of the heir of his tenant as much as the rent amounts unto which he payeth yearly. This payment on the death of a tenant is a relief. Many of these rents are of little value, as a pound of pepper, a number of capons or hens, or a pair of gloves (Littleton, § 128).

Both forfeiture and escheat are incident to tenure in socage, as they were also to tenure by knight's service. [ESCHEAT.] In that species of socage tenure which is called gavelkind [GAVELKIND] there is no forfeiture.

Wardship is also incident to this tenure. But this incident is not, as formerly in knight's service, a benefit given to the lord, but a burthen imposed on the infant's next friend of full age, who must however be a person not capable of inheriting the estate upon his young kinsman's death.

By the mutual consent of lord and tenant, socage tenure might have been converted into tenure by knight's service, or tenure by knight's service into tenure in socage. It sometimes happened that the tenant held by knight's service of a lord who held in socage; and, more frequently, that a tenant held in socage of a lord who held by knight's service.

In particular districts some of the incidents of tenure by knight's service were by custom annexed to the tenure in socage. Thus in the diocese of Winchester the lord claimed the wardship and marriage of his socagers.

Before the abolition of feudal burthens by the Commonwealth, confirmed upon the Restoration by 12 Car. II. c. 24, te-

nants in socage were bound to pay 20s. upon every 20*l.* of annual value, as an aid for making the lord's son a knight, and the same for marrying the lord's eldest daughter. This tenure was also subject to the payment of fines upon alienations.

By the above statute, the provisions of which were extended to Ireland by the Irish act of 14 & 15 Car. II. c. 19, tenure by knight's service was abolished, and all lands, with the exception of ecclesiastical lands held in free alms [FRANK-ALMOIGNE], were directed to be held in free and common socage, which, with the limited exception in favour of lands held in frankalmoigne, is now the universal tenure of real property throughout England and Ireland, and those colonies which have been settled by the English.

It is true that a large portion of the soil of all those countries is held by leaseholders, and in England also by copyholders; but the freehold of the land held by leaseholders and copyholders is in their lords or lessors, who hold that freehold by socage tenures. (On socage tenures, see Coke on Littleton, § 117, &c., and the notes in Butler's edition.)

**SOCIAL CONTRACT, or ORIGINAL CONTRACT.** Blackstone (*Com. i. p. 48*) writes as follows:—“Though Society had not its formal beginning from any convention of individuals actuated by their wants and fears, yet it is the *sense* of their weakness and imperfection that *keeps* mankind together, that demonstrates the necessity of this union, and that therefore is the solid and natural foundation as well as the cement of civil society. And this is what we mean by the original contract of society; which though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and applied in the very act of associating together—namely, that the whole should protect its parts, and that every part should pay obedience to the will of the whole; or in other words, that the community should guard the rights of each individual member, and that, in return for this protection, each individual should submit to the laws of the community; without which submission of all it were

impossible that protection could be certainly extended to any." Blackstone in a previous passage denies "that there ever was a time when there was no such thing as society, either natural or civil;" and in the passage just quoted he denies that it "had its formal beginning from any convention of individuals." The necessity of the "union" is demonstrated from the sense of weakness and imperfection which keeps mankind together: and *this* (it is not exactly clear what) is what he means by the original contract, which he further proceeds to tell us, "perhaps in no instance has ever been formally expressed." Bentham, in his 'Fragment on Government' (chap. i.), has in a very amusing manner exposed the absurdities and contradictions which characterise Blackstone's chapter 'Of the Nature of Laws in General.'

Locke's doctrine is more distinctly expressed (*Essay on Civil Government*, ch. 8, 'Of the beginning of Political Societies'). He says that "men being by nature all free, equal, and independent, no one can be put out of this estate and subjected to the political power of another without his own consent." By *can* he does not mean to say that it may not happen that one man shall be subjected to the political power of another, but that he cannot properly or justly be subjected without his consent; which appears from what follows:—"Whosoever therefore out of a state of nature unite into a community must be understood to give up all the power necessary to the ends for which they unite in society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is or needs be between the individuals that enter into or make up a commonwealth. And thus that which begins and actually constitutes any political society, is nothing but the consent of any number of free men capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world." This doctrine is open to obvious objection. The conclusion as to

the origin of "*lawful government*" by implication contains the notion that some governments are not lawful, whereas all men must and do admit that all governments which can maintain themselves are governments, and the term lawful is not applicable to that power which can declare what is lawful. The two objections which Locke mentions as being made to the theory are, 1—"That there are no instances to be found in story of a company of men independent and equal one amongst another, that met together, and in this way began and set up a government." 2. That "it is impossible of right that men should do so, because all men being born under government, they are to submit to that, and are not at liberty to begin a new one." Locke replies to both objections with considerable ingenuity, but there are few political writers at present who will be inclined to consider his answer conclusive.

Hume, in his 'Essay on the Original Contract,' admits that "the people, if we trace government to its first origin in the woods and deserts, are the source of all power and jurisdiction, and voluntarily, for the sake of peace and order, abandoned their native liberty, and received laws from their equal and companion. The conditions upon which they were willing to submit were either expressed or were so clear and obvious that it might well be esteemed superfluous to express them. If this, then, be meant by the original contract, it cannot be denied that all government is at first founded on a contract, and that the most antient rude combinations of mankind were formed entirely by that principle." And yet he adds, "in vain are we sent to seek for this charter of our liberties—it preceded the use of writing and all the other civilised arts of life." Consequently we cannot trace "government to its first origin," and therefore we cannot tell how Government originated. But we do know, as Hume shows, that all governments of which we can trace the origin have been founded in some other way than by an original contract among all the members who are included in them. Hume further says, "that if the agreement by which savage men first associated and

conjoined their force be meant (by the term Original Contract), this is acknowledged to be real; but being so antient, and being obliterated by a thousand changes of government and princes, it cannot now be supposed to retain any authority. If we would say anything to the purpose, we must assert that every particular government which is lawful, and which imposes any duty of allegiance on the subject, was at first founded on consent and a voluntary compact." This is the real question. Those who found what they very incorrectly term "lawful government" on an original contract, must show us the contract. So far Hume's objection is good, and whether there was an original contract or not is immaterial. The question is, what was the origin of any particular government? Those who maintain that any particular government originated in a contract of all the persons who, at the time of the formation of the government, were included in it, cannot prove their case. Those who deny the original contract can show that many particular governments have originated "without any pretence of a fair consent or voluntary subjection of the people."

But an original contract, such as Hume admits, is as far removed from the possibility of proof as the origin of any particular government by virtue of a contract; nor have we any record of savage men associating to form a government. If one set of savage men did this, others would do it, and there must have been many original contracts, which contracts are the remote origin of all particular governments; but inasmuch as that origin of any particular government, which we do know, was not made by contract, and did not recognise the original contract, such government is unlawful, as those who contend for the theory of an original contract would affirm, or ought to affirm, if they would be consistent. Thus the practical consequences of the doctrine of an original contract, if we rigorously follow them out, are almost as mischievous as the doctrine that every particular government was founded on an original contract. It is true that the theory of an original contract of savage people being

the foundation of government is a mere harmless absurdity, when at the same time we deny that any particular government has so originated, provided we admit that such particular government is not to be resisted simply because it is not founded on contract. Those who maintain that all existing governments rest on no other foundation than a contract, affirm that all men are still born equal—that they owe no allegiance to a power or government, unless they are bound by a promise—that they give up their natural liberty for some advantage—that the sovereign promises him these advantages, and if he fails in the execution, he has broken the articles of engagement, and has freed his subjects from all obligations to allegiance. "Such, according to these philosophers, is the foundation of authority in every government; and such is the right of resistance possessed by the subject" (Hume). This is a good exposition of the consequences that follow from the theory of every government being founded on contract.

Governments, as we now see them, exist in various forms, and they exist by virtue of their power to maintain themselves. This power may be mere force in the government and fear in the governed. Combined with the power of the government there may be the opinion of a majority in favour of the government, or of a number sufficiently large and united to control the rest; and this opinion may be founded either on the advantage which such number or majority conceive that they derive from the actual form of government, or the advantage which they and all the rest are supposed to derive from such government. The opinion of a considerable number may be strong enough to overthrow a government or to maintain it, but in either case it is not the opinion of all.

The real origin of government lies in the constitution of man's nature. Man is a social animal, and cannot exist out of society. He is of necessity born in a society, that is, a family, the smallest element to which we can reduce a state. He who requires not to live in a society, says Aristotle, must be a beast or a god (*Politik.* i. 2). The nature of man com-

pels him to seek union with the other sex. A man by himself is not a complete being: by the constitution of their nature man and woman must unite; and this is the foundation of a family. Those who accept the Mosaic account of the creation have there a clear statement of the origin of a family; and the father's authority is as much in accordance with the constitution of our nature as the union of the father and the mother. The various modes in which the descendants of a common pair might be detached from their primitive seats are infinite; and the modes in which they might be formed into political societies are infinite also. But if we have no account of them, it is useless to speculate what the precise modes may have been. Man, says Aristotle, is by nature a political animal; and by his nature he has an impulse to political union. He therefore follows the law of his nature by living in political society, as much as he obeys it by uniting himself with a woman. The form of any particular government, and the mode in which it may have been established, are the accidents, not the essentials, of political union, the real foundation of which is in our nature. But inasmuch as every community exists for some good end (Aristotle), we estimate the value of any particular government by its fitness for this end, and the accidents of its form are subordinate to that for which pursuant to its nature it exists. Its origin may in many cases have been as obscure, and as little perceived, as the origin of those customs which exist in such endless variety in the world. Nobody supposes that customs originated in universal consent, or that people who follow them, or at least the majority who follow them, ever consider why they follow them. He who can trace the origin of customs can trace the origin of government.

The theory of men living in a state of nature and thence proceeding to form political societies has apparently derived some countenance from the condition of many savages. There are perhaps people who may be said to have no government, if it be true that among some savages there is no bond of union except that of families. If this is so, each family is

ruled by its head, like the families of the Cyclops (Aristotle, *Politik.* i. 1), so long as the head can maintain his dominion. This state, if it exists anywhere, is perhaps what some people call a state of nature; but it is in fact a very imperfect state of nature, for the perfect state of nature is a political society, because it is that state to which the nature of our constitution impels us as the best. The savage in his lowest condition bears the same relation to the man who is a member of a political body that the man who has not his senses bears to the man who has his full understanding. Both the savage and the idiot are imperfect men: they are the deviations from the course of nature.

**SOCIETIES, ASSOCIATIONS.** The great increase of Societies or Associations for all kinds of purposes is characteristic of the present condition of Europeans in Europe and of Europeans who have settled in other parts of the world. Association for particular objects is analogous to the great associations of political societies, but with this difference, that their object is something particular, and that they are really established and exist by the consent of the individuals who compose them. [SOCIAL CONTRACT.]

Societies have been formed and exist for nearly every variety of object. There are societies for objects scientific and literary, sometimes called academies; for objects religious and moral; and for objects which are directly material, but in their results are generally beneficial to the whole of mankind. There are societies for objects which the members consider useful, but which other people consider to be mischievous. Generally, in this country, it may be stated that any number of individuals are permitted to contribute their money and their personal exertions for any object which is not expressly forbidden by some statute, or which would not be declared illegal by some court of justice, if the legality of such association came in question before it. The objects for which persons may and do associate are accordingly as numerous as the objects which individuals may design to accomplish, but cannot accomplish without uniting their efforts.

In some cases the State has aided in the formation of such associations, and has given them greater security for carrying their purposes into effect, as in the case of savings' banks and friendly societies. Sometimes the State grants a charter of incorporation to associations, which in many respects enables the body to transact its matters of business more conveniently. Sometimes the State perceives that it can extract some revenue from persons who associate for particular purposes, as in the case of fire-insurance offices, for all persons who insure their property in them (except farming stock, &c.) must pay the state 200 per cent. on the sum which they pay to secure their property against the accidents of fire. [INSURANCE, FIRE.] If a man should think it prudent to invest a part of his annual savings in a life insurance, the state makes him pay a tax on the policy. A great many associations of individuals for benevolent, scientific, and such like purposes are left to direct their associations according to the common principles of law.

If lists were made of all the associations in Great Britain and Ireland, including those which are purely commercial, with an account of their objects, income, and applications of income, we should have the evidence of an amount of activity and combination that was never equalled before. How far it might be prudent to give to all associations for lawful purposes greater facilities for the management of their property and the making of contracts, subject to certain regulations as to registration of their rules and approval of their objects, is a matter well deserving of the attention of the legislature.

SOLDIER is a term applied to every man employed in the military service of a prince or state, but it was at first given to such persons only as were expressly engaged for pay, to follow some chief in his warlike expeditions. Caesar mentions a band of 600 men called "soldarii," who bound themselves to attend their leader in action and to live or die with him (*De Bello Gallico*, iii. 22), but it does not appear that they served for pay. By some the word has been thought to come from "solidus," the name of a coin under the

Roman empire, which may have been received as the payment for the service.

In the article ARMY, a sketch is given of the origin of standing armies in Europe and in England. The present article treats of the condition of the English soldier in modern times. Little change seems to have taken place in the pay of the English soldiers between the times of Edward III. and Mary. During the reign of this queen the daily pay of a captain of heavy cavalry was 10s., and of a cavalry soldier 1s. 6d. The pay of a captain of light cavalry was 6s., and of a soldier 1s. The pay of a captain of foot was 4s., of a lieutenant 2s., of an ensign 1s., and of a foot soldier 8d.; a halbardier and a hackbutter, on horseback, had each 1s. daily. In the times of Elizabeth, James I., and Charles I., the pay of the officers was a little raised, but that of a private foot-soldier was still 8d. per day: during the civil wars the pay of the latter was 9d., but in the reign of William III. it was again reduced to 8d. At that time the pay of a private trooper was 2s. 6d., and that of a private dragoon was 1s. 6d., including in both cases the allowance for the horse. The pay of the private soldier in later times has by no means been raised in the inverse ratio of the value of money.

While armour was in general use, the common soldiers of England were distinguished only by scarfs or by badges, on which were impressed the arms of their several leaders; but in the reign of Henry VIII. something like a uniform was worn, and it appears that the colour of the men's upper garments was then generally white; the soldiers in the king's particular service only, had on their coats a representation of the cross of St. George. However, on an army being raised in 1544, the soldiers were ordered to wear coats of blue cloth bordered with red. White cloaks marked with red crosses continued to be the uniform of the troops during the reign of Queen Mary; but in the time of Elizabeth the infantry soldiers wore a cassock and long trowsers, both of which were of Kentish grey: the cavalry were furnished with red cloaks reaching down to the knee and without sleeves. Grey coats, with breeches of the same colour,



continued to be the uniform as late as the end of the reign of William III., but soon after that time red became the general colour for the coats of the British infantry soldiers.

The low condition of the first soldiers in France has been mentioned in the article INFANTRY: with respect to those of England in the times of Henry VIII. and Edward VI., we have a more favourable account; for Sir John Smithe, in the preface to his tract on 'Military Instruction' (1591), observes that the order and discipline in the armies during the reigns of those kings were so good, that the men, on being discharged, were never seen to become rogues or to go begging under pretence that they had been soldiers, as, he observes, they now most commonly do. In the preface to his 'Discourses on the Forms and Effects of Weapons' (1590) he complains that, in his time, the commanders of troops serving abroad, instead of publishing regulations for the conduct of the men, gave a few laws artfully tending to deter the soldiers from demanding their pay, but in no way prohibiting them from plundering the people of the country: he adds that they esteemed those soldiers to be the best who, by robbery, could live longest without pay. He complains also that while the commanders were gallant in appearance, and had their purses full of gold, the soldiers were without armour, ragged, and barefooted; and that when money was to be received, they used to send the men on desperate enterprises, in order that they might obtain the pay of those who were killed. He adds, that in the summer before the Earl of Leicester went over (to Holland) the commanders devised a manner of paying the soldiers which had never before been heard of; instead of money, the men were paid in *provand*, under pretence that they knew not how to make purchases; by which means, the food supplied being of an inferior kind, great part of the soldiers' pay was put in their own pockets. It appears that Queen Elizabeth, on being informed of these abuses, caused the practice of paying in provand to be abolished. But subsequently, even in the time of George I., the pay both of officers and private soldiers was frequently postponed

for years, and was sometimes entirely withheld. Such injustice no longer exists in the British army: the pay of the soldier is assured to him by the nation; and a well-appointed commissariat provides, as far as possible, for his wants while in the field.

Till lately the condition of a private soldier, both in this country and on the Continent, was unfavourable for inspiring a love of the service. Obligated to be furnished with good clothing and to preserve a becoming appearance, that which remained of his scanty pay scarcely sufficed for procuring the food necessary for his support. In his barracks he was subject to numerous petty details of duty, which produced weariness and disgust; and, at all times, to the restraints of discipline, which deprived him of the recreations enjoyed by other men. The soldier also had often the mortification to find himself despised for his poverty by persons with whom men of his condition are accustomed to associate. These disadvantages are now however in a great measure removed; and the pay of the soldier suffices to afford him the means of obtaining the comforts of life in a degree at least equal to those which are enjoyed by an ordinary peasant or mechanic. With the improvement of his condition, a corresponding improvement in the character of the soldiers has taken place: men of steady habits are induced to enlist, and officers are enabled to select the best among those persons who present themselves as recruits.

The duties of the soldier are now rendered as little burthensome as is consistent with the good of the service; and the army regulations prescribe that he shall at all times be treated with mildness and humanity: even the non-commissioned officers are required to use patience and forbearance in instructing the recruits in their military exercises. When breaches of discipline on the part of the soldier oblige a commander to order the infliction of punishment, attention is paid as much as possible to render it a means of promoting a reformation of character: the lash is now very sparingly used. Wherever a regiment is quartered there is established for the soldiers a school, which

the men are obliged, as part of their duty, to attend, and which is generally furnished with a library for their use. The library and school are formed and supported by the subscriptions of the officers, and both have been found to contribute greatly to the preservation of sobriety and good conduct among the men.

In time of peace the soldier, being surrounded by the members of civil society, must, like them, conform to the law; and, being under the influence of public opinion, he is, unconsciously to himself, held in obedience by it; so that no extraordinary coercion is necessary to keep him within the bounds of civil or military law. But in the colonies the soldier, even though he be serving in a time of peace, has many temptations to fall into a neglect or breach of discipline: he is far removed from the friends of his early life, who may have exercised upon his mind a moral influence for good: he sees around him only the conduct, too frequently licentious, of the lower orders of people in the country where he is stationed; and he may not possess the principles which should have been implanted in his mind by a sound education. The probability of a return to his native land before many years have passed is small, and the diseases to which he is exposed from the unhealthiness of the climate frequently terminate fatally: hence he becomes reckless from despair, and the facilities with which wine or spirituous liquors may often be obtained lead him into excesses which, while they accelerate the ruin of his health and render him unfit for duty, cause him to commit offences both against discipline and morals. Thus in the colonies there arises a necessity for greater restraints on the freedom of the soldier, and for the infliction of heavier punishments than are required at home. (Major-Gen. Sir Chas. Napier, *Remarks on Military Law*.) In time of war and on foreign service a vigorous discipline is necessary: the privations to which soldiers are then exposed strongly induce those who are not thoroughly imbued with moral and religious principles to plunder the country-people, in order to supply their immediate wants, or to drown the sense of their sufferings in

liquor. It ought also to be observed that in war-time, many turbulent spirits are induced to enter the army in the hope of enjoying the licence which the military life abroad appears to hold out. These men are the ringleaders in all excesses, and they frequently cause many of those who are weak in principle to join them; in such cases therefore the most severe measures must be immediately applied, if discipline is to be preserved in the army. The efforts made by the British commanders, during the war against the French in Spain, to maintain order, and prevent the people of the country from being injured, were great and praiseworthy. Perhaps fewer crimes were committed by the British troops than by those of their allies or their enemies; but still there were many occasions in which the national character was disgraced by the misconduct of the soldiery.

SOLICITOR. [ATTORNEY.]

SOVEREIGNTY. *Supranus* is a low Latin word, formed from *supra*, like *subtronus*, another low Latin word, formed from *subtra*. (Ducange in *vv*.) These words however, though they do not belong to classical Latinity, are formed according to the same analogy as the classical word *supernus* from *super*. From *supranus* have been derived the Italian *soprano* or *sovrano*, and the French *souverain*, from the latter of which has been borrowed the English word *sovereign*. In the old English writers the word is correctly spelt *soverain* or *soverein* (Richardson in *v*.); the received orthography seems to be founded on the erroneous supposition that the last syllable of the word is connected with *reign*, *regnum*. Milton spells the word *soveran*, deriving it from the Italian; but it passed into our language from the French.

Having explained the etymology of the word *sovereign*, and its derivative, *sovereignty*, we proceed to consider the meaning of the term sovereignty as it is understood by political and juridical writers.

In every society not being in a state of nature or a state of anarchy [ANARCHY], some person or persons must possess the supreme or *sovereign* power.

The marks by which the possession of the sovereign power may be distinguished are mainly two, the one positive and the other negative; viz.:

1. A habit of obedience to some determinate person or persons, by the community which he or they assume to govern.

2. The absence of a habit of obedience, on the part of the same person or persons, to any person or government.

Whenever these two marks meet in any person or body of persons, such person or body possesses the sovereign power; on the other hand, if either of the two marks be wanting, the person or body is not sovereign. For example, the local government of Jamaica or Canada, being in the habit of obeying the English parliament, is not a sovereign or supreme government; whereas the government of Tuscany, or the States of the Church, although it may occasionally defer to the wishes of Austria, is not in a habit of obedience to that or any other state, and therefore is a sovereign government. Again, a body of persons calling themselves a government, but unable through their weakness to secure the habitual obedience of the people, are not sovereign, and would not be recognised as a sovereign government by foreign states.

Inasmuch as it is impossible to fix the precise moment at which a habit of obedience to a foreign government ceases, it is difficult for foreign states to determine when they will recognise the sovereignty of a territory, once dependent, which has achieved its independence.

The sovereign powers include all the powers which can be exercised by a government. They include the legislative power, the executive power, the power of making *privilegia* [LAW; LEGISLATION], the power of declaring peace and war, and of concluding treaties with foreign states, the power of making contracts with private individuals, and the power of instituting inquiries.

The sovereign power is unlimited by any legal check or control. The securities for its beneficial exercise are derived exclusively from the balance of interests and the influence of public opinion.

Sovereign or supreme governments are divided into MONARCHIES and REPUBLICS; and REPUBLICS are divided into ARISTOCRACIES and DEMOCRACIES.

It is commonly, but erroneously, thought that the sovereignty resides in every person who bears the name of *king*; in other words, that every king is a monarch. Accordingly those kingdoms in which the king is not strictly a monarch are called "limited monarchies;" and the king is supposed to be a sovereign whose power is checked or controlled by certain popular bodies; whereas, in truth, the sovereignty is divided between the king and the popular body, and the former does not possess the entire sovereignty. This subject is further explained in MONARCHY and ROYALTY.

A sovereign government may cease to exist as such by becoming a subordinate government (as was, for example, the case with the governments of the islands of the *Ægean*, conquered by Athens, and the governments of the states which became Roman provinces), or by its dissolution, in consequence of a successful rebellion of its own subjects, or any other cause.

The subject of sovereignty will be found best explained in Mr. Austin's 'Province of Jurisprudence determined.' The received doctrines upon the subject will likewise be found in the treatises on international law. The *Leviathan* of Hobbes contains a very correct view of the nature of sovereignty, which has been often misunderstood and misrepresented by later writers.

SPEAKER. [PARLIAMENT.]

SPECIALTY, SPECIALTY DEBT, or debt by special contract, is a debt which becomes due or is acknowledged to be due by an instrument under seal. [DEED, p. 730.]

The nature of a debt by simple contract is explained under SIMPLE CONTRACT.

Blackstone (ii. 464) considers a debt of record, that is, a debt which appears to be due by the judgment of a court of record, as a "contract of the highest nature, being established by the sentence of a court of

judicature." This is, however, an erroneous view of the matter. It is simply a rule of law that a debt, for which the judgment of a court of record has been obtained, has a priority over other debts.

SPECIFICATION. [PATENT.]

SPIRITS. [WINE AND SPIRITS.]

SPY. In the discussion of this and many other questions of international law, the terms Right, Law, Lawful, and others of the same class, must be understood in a different sense from their proper technical meaning. What writers on International Law speak of as a Right is very often merely what appears fair, reasonable, or expedient to be done, or to be permitted. It is this reasonableness or expediency alone which is the foundation of those various usages which are recognised by independent civilized nations in their intercourse one among another, and constitute what is called the Law of Nations. Thus a person or a power is said to have a right according to the Law of Nations, which means that the usage of civilized nations permits the act, and this is the least objectionable sense in which the word Right is used. But when writers use the word Right merely in the sense of what is expedient, without reference to its being the foundation of a recognised usage, they are confounding the reason or foundation of a usage with the usage itself.

No doubt, we believe, has ever been intimated by any writer of authority on International Law, as to the right of nations at war with each other to avail themselves of the service of spies in carrying on their hostile operations. "Spies, whom it is, without doubt, permitted by the law of nations to employ; Moses made use of such, and Joshua himself acted in that capacity." This is the expression of Grotius in the only passage in which he touches on the subject (*Bell. et Pac.* iii. 4, 818, par. 3). Vattel says:—"If those whom he (a general) employs make a voluntary tender of their services, or if they be neither subject to nor in any wise connected with the enemy, he may unquestionably take advantage of their exertions without any violation of justice or honour" (*Le Droit des Gens*, iii. 10, § 179, in the common

English translation as edited by Chitty, 8vo., London, 1834).

But it is generally held that the right can only be exercised under limitations of various kinds.

First, as to the right of the general, or of the sovereign for whom he acts, to compel any one subject to his authority to serve as a spy. Grotius, in the passage to which we have referred, admits that spies when caught are wont to be treated with extreme severity; and he adds, that this is sometimes done justly by those who have a manifestly just cause of war—by others, in the licence which the law of war tolerates (*licentia illa quam dat belli jus*); a useless distinction, upon which no practical rule can be founded. In fact, as Grotius himself notices, the custom is, when a spy is caught, to put him to death. Vattel attempts to assign the reason for this severity: "Spies," he says, "are generally condemned to capital punishment, and with great justice, since we have scarcely any other means of guarding against the mischief they may do us." A man of honour, Vattel proceeds to observe, always declines serving as a spy as well as from his reluctance to expose himself to this chance of an ignominious death, as because, moreover, the office cannot be performed without some degree of treachery: "the sovereign, therefore, has no right to require such a service of his subjects, unless perhaps in some singular case, and that of the highest importance." Such loose exceptions as that here stated abound in the writers on International Law, and detract very much from the practical value as well as from the scientific character of their speculations. In ordinary cases, Vattel therefore decides, the general must be left to procure spies in the best way he can, by tempting mercenary souls by rewards.

Secondly, the employment of spies is conceived to be subject to certain limitations in respect to the manner of it and the object attempted to be gained by it. "We may lawfully endeavour," says Vattel, "to weaken the enemy by all possible means, provided they do not affect the common safety of human society, as do poison and assassination." Accordingly, the proper business of a spy is merely to

obtain intelligence, and such secret emissaries must not be employed to take the lives of any of the enemy, although that, done in another way, is commonly the main immediate object of the war. Yet it might be somewhat difficult to establish a clear distinction between what would be called an act of assassination by a spy, and many of those surprises of an enemy which, so far from being condemned or deemed dishonourable, have usually been admired. But it has been maintained that an officer or soldier cannot be treated as a spy in any circumstances, if he had his uniform on when apprehended. See Martens, *Précis du Droit des Gens Modernes de l'Europe* (traduit de l'Allemand) Paris, 1831, liv. viii., ch. iv., § 274; where references are made to Brückner, *De Explorationibus et Exploratoribus*, Jen., 1700; to Hannov. *Gel. Anzeigen*, 1751, pp. 383 et seq.; and, in regard to the celebrated case of André in the American war, to Martens, *Erzählungen merkwürdiger Fälle*, i. 303, and to Kamptz, *Beyträge zum Staats und Völkerrecht*, tom. i., No. 3.

A question closely connected with the so-called lawfulness of employing spies, and indeed forming in one view a part of that question, is that of the lawfulness of soliciting the enemy's subjects to act as spies, or to betray him. Vattel discusses this matter in reference to considerations both of law and of honour, or conscience. "It is asked in general," he begins, "whether it be lawful to seduce the enemy's men, for the purpose of engaging them to transgress their duty by an infamous treachery." It has been already stated that he lays down the principle that we may lawfully endeavour to weaken the enemy by any means not affecting the common safety of human society; and he determines that seducing an enemy's subject does not come under this exception. Such measures, accordingly, he observes, are practised in all wars. But still he argues, they are not honourable, nor compatible with the laws of a pure conscience; an evidence of which we have in the fact that generals are never heard to boast of having practised them. "If such practices," concludes Vattel, "are at all excusable, it can be only in a very just

war, and when the immediate object is to save our country when threatened with ruin by a lawless conqueror. On such an occasion (as it should seem) the guilt of the subject or general who should betray his sovereign when engaged in an evidently unjust cause would not be of so very odious a nature." But who ever heard of a war that was not thought by those engaged in it to be a just war on their own side and an unjust war on the part of their adversaries? So that this distinction settles nothing. It is held however to be perfectly allowable in every point of view merely to accept the offers of a traitor. In this case Vattel argues, "We do not seduce him; and we may take the advantage of his crime, while at the same time we detest it. Fugitives and deserters commit a crime against their sovereign; yet we receive and harbour them *by the law of war*, as the civil law expresses it." If such offers have ever been rejected, as that of the physician of Pyrrhus, who offered to poison his master, was by the Romans, he holds the act to be one of magnanimity indeed, but yet as one which no general or sovereign is bound to imitate. Or, as Grotius has expressed it, such a course may evince loftiness of mind in those who pursue it, or their confidence of being able to compass their objects by open force, but has nothing to do with the question of what is lawful or unlawful. Martens holds with still less qualification, that we cannot condemn as an illegitimate means of carrying on a war the corruption employed to seduce the officers or other subjects of the enemy, and to tempt them either to reveal a secret or to surrender a post, or even to get up a revolt; it is the business of each state, he argues, to protect itself from such attempts by a careful choice of the persons it employs or trusts, and by the severity of the penalties with which it punishes their treachery. "But," he adds, "it is without doubt to overleap by a great way the bounds of the law of war, and to declare itself an enemy of the whole human race, for a nation to try to stir up every other people to revolt by a general promise of assistance, as was done by the French National Convention in their decree of the 19th of November,

1792." Yet wildly absurd as this decree was, its violation of the law of nations seems to have consisted merely in its not being confined to the case of such foreign countries only as the French republic might be then at war with; unless indeed it was intended to be taken, as it could not fail to be, for a declaration of war against all existing governments.

The proper question as to the so-called law of nations with regard to spies, is what practices are sanctioned by the general usage of independent civilized nations. Such practices as are now permitted by such usage constitute a part of this so-called international law. Those practices which are not generally permitted or acknowledged are not yet a part of such law. Persons who have occasion to write or think on this subject will find that much of the indistinctness and confusion observable in the treatises on the law of nations will be removed if they will first form for themselves a clear conception of the proper meaning of the word Law, and of the improper meanings which it has also acquired; and they will thus be enabled to give the necessary precision to terms which are used so vaguely by writers on international law. [Law; Right.]

SQUADRON, the principal division of a regiment of cavalry: the numerical strength of a squadron has varied at different times, but at present it consists of one hundred and sixty men, of whom about one-sixth are not under arms. This body of men is divided into two troops, each of which is commanded by its captain, who has under him a lieutenant and a cornet. The word is supposed to be derived from "squadra" (Italian), which is itself corrupted from the Latin word "quadratum;" *acies quadrata* denoted a body of men drawn up in a square form. The term "escadron" occurs in Froissart's 'Chronicles,' and probably it was very early used in the French armies to designate a body of cavalry.

The strength of an army, with respect to cavalry, is usually expressed by the number of squadrons in the field, as it is with respect to infantry by the number of battalions. Each regiment of cavalry consists of three or four squadrons; and

when in line, one yard in the length of the front is allotted for each man and horse: the interval in line between every two squadrons is equal to one-quarter of the extent occupied by each squadron.

STABBING. [Main.]

STAFF, MILITARY. In the British empire this consists, under the king and the general commanding-in-chief, of those general, field, and regimental officers to whom is confided the care of providing the means of rendering the military force of the nation efficient, of maintaining discipline in the army, and regulating the duties in every branch of the service.

Besides the commander-in-chief, his military secretaries and aides-de-camp, the general staff consists of the adjutant and quartermaster-generals, with their respective deputies, assistants, and deputy-assistants; the director-general of the medical department, and chaplain-general of the forces. The staff of the Ordnance department consists of the master-general and lieutenant-general, with their deputies and assistants; the inspector of fortifications, and the director of the engineers. The head-quarters for the general staff are in London. There are also, for the several military districts into which Great Britain is divided, inspecting field-officers, assistant adjutants-general, and majors of brigade, together with the officers attached to the recruiting service. The head-quarters for Scotland are at Edinburgh. For Ireland, besides the lord-lieutenant and his aides-de-camp, the chiefs of the staff consist of a deputy-adjutant and a deputy quartermaster-general, with their assistants. Their head-quarters are at Dublin; and there are, besides, the several officers for the military districts of that part of the empire. Lastly, in each of the colonies there is a staff graduated in accordance with the general staff of the army, and consisting of the general commanding, his aides-de-camp, military secretaries, and majors of brigade, an inspecting field officer, a deputy-adjutant and a deputy-quartermaster-general.

The adjutant-general of the army is charged with the duty of recruiting, clothing, and arming the troops, superintending their discipline, granting leave of absence, and discharging the men when the

period of their service is expired. To the quartermaster-general is confided the duty of regulating the marches of the troops, providing the supplies of provisions, and assigning the quarters, or places of encampment.

All military commanders of territories or of bodies of troops in Great Britain, Ireland, or in foreign stations, transmit periodically to the adjutant-general of the army circumstantial accounts of the state of the territory and of the troops which they command; and the reports are regularly submitted to the general commanding-in-chief.

The staff of a regiment consists of the adjutant, quartermaster, paymaster, chaplain, and surgeon.

About the year 1800 the British government first formed a particular school for the purpose of instructing officers in the art of surveying ground in connection with that part of tactics which relates to the choice of routes and of advantageous positions for troops. These officers were independent of the master-general of the ordnance, and served under the orders of the quartermaster-general or adjutant-general; they were called staff-officers, and were selected from the cavalry or infantry after having done duty with a regiment at least four years. They were first employed in Egypt, where they rendered considerable service; and the school was afterwards united to the Royal Military College, which had been then recently instituted for the instruction of cadets who were to serve in the cavalry or the infantry of the line. At that institution a limited number of officers, under the name of the senior department, continue to be instructed in the duties of the staff, and in the sciences connected with the military art.

During the war in Spain, from 1808 to 1813, the staff-officers were constantly employed, previously to a march or a retreat, in surveying the country at least one day's journey in front of the army. After the death of the Duke of York, the staff corps ceased to be kept up, and for several years it was reduced to a single company, which was charged with the duty of repairing the military canal at Hythe. This company was afterwards

incorporated with the corps of sappers and miners.

The duties of officers belonging to the quartermaster-general's staff are very different from those of the military engineers; the latter are employed in the construction of permanent fortifications, batteries, and field-works; while the former survey ground in order to discover roads, or sites for military positions, for fields of battle, or quarters for the troops. The education of a staff-officer is such as may qualify him for appreciating the military character of ground: for this purpose he learns to trace the directions of roads and the courses of rivers or streams; and in mountainous countries to distinguish the principal chains from their ramifications, to examine the entrances of gorges, and to determine the heights of eminences or the depths of ravines. He has, besides, to acquire a facility in determining or estimating the resources of a district with respect to the means it affords of supplying provisions or quarters for the troops.

The staff-officer ought also to know how to correct the illusions to which the eye is subject in examining ground, from the different states of the air, and the number and nature of the objects which may intervene between himself and those whose positions are required. He ought to be able to estimate the number of men which a visible tract of ground can contain, and to form a judgment concerning the dispositions and stratagems which it may permit an army to put in practice.

**STAGE-CARRIAGE. HACKNEY-COACH. CABRIOLET.** A Stage Carriage is defined by the 2 and 3 Wm. IV. c. 102, as a carriage of any construction for conveying passengers for hire to or from any place in Great Britain, which shall travel at the rate of not less than three miles in the hour and be impelled by animal power, provided each passenger pay a distinct fare for his place therein. Railway carriages and vehicles moved by steam are excluded from the definition.

By the 1 and 2 Wm. IV. c. 22, it is declared that every carriage with two or more wheels, used for plying for hire in any public street at any place within five miles from the General Post-office in London, of whatever form or construo-

tion, or whatever may be the number of persons which it shall be calculated to convey, or the number of horses by which it shall be drawn, shall be deemed a *hackney-carriage*. This class of public vehicles appears to have originated in London. The rise and progress of their use in London may be pretty distinctly traced from notices in Macpherson's 'Annals of Commerce,' and in Anderson's 'History of Commerce,' of which work the early volumes of Macpherson are a reprint with but few alterations. Under the year 1625 Macpherson, or rather Anderson, observes that "Our historiographers of the city of London relate that it was in this year that hackney-coaches first began to ply in London streets, or rather at the inns, to be called for as they were wanted; and they were at this time only twenty in number." In 1652 the number of hackney-coaches daily plying in the streets was limited to 200; in 1654 it was increased to 300, allowing however only 600 horses; in 1661 to 400; and in 1694 to 700. By an act of the 9th year of Anne (c. 23) the number was to be increased to 800 on the expiration, in 1715, of the licences then in force, and 200 hackney-chairs were also licensed. The number of chairs was shortly increased to 300, and by the act 12 Geo. I. c. 12, to 400. In 1771 the number of coaches was further increased to 1000.

A lighter kind of vehicle, drawn by one horse, was brought into extensive use in Paris. Efforts were made to introduce similar vehicles into this country, but owing to a regard for the "vested rights" of the hackney-coach owners, it was long found impossible to get licences for them. With great difficulty Messrs. Bradshaw and Rotch (the latter a member of parliament) obtained licences for eight cabriolets in 1823, and started them at fares one-third lower than those of hackney-coaches. The name "cab" is now commonly applied to all hackney-carriages drawn by one horse, whether on two or four wheels. During the first few years of the employment of such carriages their number was restricted to sixty-five, while the number of coach-licences was increased to twelve hundred; but in 1832 all restriction as to the number of hackney-carriages was removed.

The number of hackney-carriages licensed for use during the year ending January 4, 1845, was 2450, all of which, with the exception of less than 200, were cabs, or one-horse vehicles. The number of drivers licensed during the year ending May, 1844, was 4627, besides 371 watermen.

The generally low standard of moral character among cab-drivers leads to the adoption of a system of remuneration which is not calculated to promote honesty and good feeling. The vehicles and horses are lent out at a fixed sum per day; or rather, the men are expected to bring home the stipulated amount. The experiment of paying liberal wages, and trusting to the honour of men, is said to have been tried and found utterly impracticable.

An attempt was made, about the year 1800, to introduce a more commodious kind of vehicle, resembling an omnibus, instead of the old stage-coaches, which could only carry four or at most six inside passengers, but the project failed. When re-introduced from Paris the omnibus was drawn by three horses abreast, but this arrangement was soon abandoned.

The first successful omnibus in London was started by a coach-builder named Shillibeer, in July, 1829, to run between Greenwich and Charing-Cross, at fares considerably less than those of the old short stages; in addition to which advantage, the greater part of the passengers were sheltered from the weather. By the judicious arrangement of making the same charge for inside and outside places, Shillibeer soon obtained extensive patronage, and began to break down the petty feeling of exclusiveness which formerly distinguished inside from outside passengers. Success in the first experiment led Shillibeer to establish omnibuses between Paddington and the Bank. After much opposition the new system of travelling was fully established.

(Some of the facts in the preceding part of this article are derived from two papers in Chambers's 'Edinburgh Journal' for 1845 (Nos. 76 and 78), but much of the historical matter is to be found in Knight's 'London' and the 'Penny Magazine,' vol. vi.)

In 1799 the act of parliament was passed (19 Geo. III. c. 51) which first



imposed a duty on hired carriages of any description. This duty has at times been variously regulated, and is now settled by the above act, amended by 2 & 3 Wm. IV. c. 120, and 3 & 4 Wm. IV. c. 48.

The laws which relate to hackney-carriages and metropolitan stage-carriages are chiefly comprised in two acts of parliament: 1 & 2 Wm. IV. c. 22, which came into operation January 5th, 1832, entitled "An Act to amend the Laws relating to Hackney-Carriages, and to Waggon, Carts, and Drays, and to place the Collection of the Duties on Hackney-Carriages and on Hawkers and Pedlars in England under the Commissioners of Stamps;" and 6 & 7 Vict. c. 86, entitled "An Act for regulating Hackney and State Carriages in and near London."

In the former act are contained the greater part of the enactments which relate to hackney-carriages; in the latter, those which more especially apply to metropolitan stage-carriages (omnibuses).

The limits of hackney-carriages (hackney-coaches and cabriolets) are five miles from the General Post-office, London; and drivers of hackney-carriages are compellable to drive five miles from the place where hired or from the General Post-office; but if any hackney-carriage shall be discharged at any place beyond the limits of the metropolis (that is, beyond a circle of which the radius is three miles from the General Post-office), after eight in the evening and before five in the morning, back-fare may be demanded to the nearest part of the said limits or to any standing-place beyond the limits where the carriage may have been hired, at the option of the hirer.

The fares of hackney-carriages are fixed by the act 1 & 2 Wm. IV. c. 22. For every hackney-carriage drawn by two horses, for any distance not exceeding one mile, 1s.; for any distance exceeding one mile, at the rate of 6d. for every half-mile and for every fractional part of half a mile over and above any number of half-miles completed. By time, the fare is, for not exceeding thirty minutes, 1s.; not exceeding forty-five minutes, 1s. 6d.; not exceeding one hour, 2s.; and for any further time after the rate of 6d. for every fifteen minutes completed, and 6d. for any

fractional part of fifteen minutes. The fares for hackney-carriages drawn by one horse (cabriolets) are one-third less, so that for the first mile they are 8d., for a mile and a half, 1s., and so on.

Every hackney-carriage and metropolitan stage-carriage is licensed by a registrar, deputy-registrar, or other officer appointed by one of Her Majesty's principal Secretaries of State; and every driver of a hackney-coach, and every driver and conductor of a metropolitan stage-carriage, and every waterman, at the time of granting the licence receives a metal ticket, which every such driver, conductor, or waterman is to wear on his breast in such manner that all the writing thereon may be distinctly visible. A stamp-duty of 5s. is charged on every licence. Plates are to be affixed to hackney-carriages with the name and abode of the proprietor and number of the licence; and "Metropolitan Stage-Carriage," or such other words as the registrar shall direct, are to be painted on omnibuses. Proprietors of metropolitan stage-carriages fix their own fares, but those fares are to be distinctly painted on or in the carriage, as well as the number of persons for whom the carriage is licensed.

Hackney-carriages standing in the street, though not on any stand, to be deemed plying for hire. Drivers may ply on Sundays, and, if plying, are compellable to drive when hired. Agreement to pay more than legal fare not binding, but driver may agree to drive any distance at discretion for a stated sum, and must not charge more than that sum, though less than legal fare. Deposit to be paid for carriage kept waiting, and driver must take the deposit and wait.

The act 6 & 7 Vict. c. 86, repeals a previous act (1 & 2 Vict. c. 79), and extends the enactments not specifically repealed of the 1 & 2 Wm. IV. c. 22, to the 6 & 7 Vict. c. 86. Other provisions of the acts relate chiefly to the restoration of property left in carriages, to furious driving, intoxication, insulting language, loitering, and other acts of misbehaviour; to proceedings of proprietors, drivers, and conductors, as to licences, payment of duties, contracts with each other; and to

modes of granting summonses, powers of magistrates, punishments, penalties, &c.

**STAMPS, STAMP ACTS.** Stamps are impressions made upon paper or parchment by the government or its officers for the purposes of revenue. They always denote the price of the particular stamp, or in other words, the tax levied upon a particular instrument stamped, and sometimes they denote the nature of the instrument itself. If the instrument is written upon paper, the stamp is impressed in relief upon the paper itself; but to a parchment instrument the stamp is attached by paste and a small piece of lead which itself forms part of the impression. These stamps are easily forged, and at various times forgeries of them upon a large scale have been discovered. The punishment for the forgery of stamps was made a capital offence by the Act of William and Mary, and continued so until the year 1830 (11 Geo. IV. & 1 Wm. IV. c. 66), when it was made punishable by transportation.

In France stamps are used both for the authentication of instruments and as a source of revenue.

The stamp tax was introduced into this country in the reign of William and Mary

5 W. & M. c. 21): such an impost had previously existed in Holland. The Act 5 W. & M. c. 21, imposes stamps upon grants from the crown, diplomas, contracts, probates of wills and letters of administration, and upon all writs, proceedings, and records in courts of law and equity; it does not, however, seem to impose stamps upon deeds, unless they are enrolled in the courts at Westminster or other courts of record. Two years afterwards, however, conveyances, deeds, and leases were subjected to the stamp duty, and by a series of acts in the succeeding reigns every instrument recording a transaction between two individuals was subjected to a stamp duty before it could be used in a court of justice. By the 38 Geo. III. c. 78, a stamp duty is imposed on newspapers, and by a subsequent act inventories and appraisements are required to be stamped. Legacies are largely taxed by means of stamped receipts. Stamps are also used as a convenient method of imposing a tax upon a

particular class of persons: thus, articles of apprenticeship are subject to duty, and articles of clerkship to a solicitor to a tax of 120*l*. Solicitors are required to take out annually a certificate, stamped either with a 12*l*., 8*l*., or 6*l*., stamp according to circumstances. Before a person commences practice as a physician, an advocate, a barrister-at-law, or an attorney, he must pay a tax varying from 50*l*. to 10*l*., under the form of a stamp upon admission. Notaries public, bankers, pawnbrokers, and others, must obtain a yearly licence in order to exercise their callings.

The schedule to the Act 55 Geo. III. c. 124, which consolidates all the previous acts, occupies nearly 100 octavo pages. Since the year 1815 the stamp duties have been mitigated. The 5 Geo. IV. c. 41, exempts law proceedings from stamps; and the stamps upon newspapers were reduced from fourpence to a penny by 6 & 7 Wm. IV. c. 76 (1836), which duty exempts the paper from postage. As to the stamp duties on advertisements and newspapers, see ADVERTISEMENTS and NEWSPAPERS.

In order to protect the revenue, the stamp acts usually impose a penalty upon any fraudulent evasion of their provisions; and the 44 Geo. III. c. 98 enacts that the proceedings shall be in the name of the attorney-general in England, or the king's advocate in Scotland, and that the penalty shall go entirely to the crown.

The acts render an unstamped instrument invalid, and in order to increase the revenue they multiply the number of instruments to authenticate any transaction. Hence the stamp acts have given rise to many questions in courts of law as to the amount of stamps required for particular instruments, the nature of those stamps, the effect which the insufficiency or erroneous nature of the stamp may produce upon the instrument, and the use which may be made in a court of justice of a paper not stamped, but nevertheless unquestionably recording a particular fact.

The courts of law have usually interpreted the stamp acts with the same strictness with which penal statutes are interpreted, giving to exemptions as large an extension as the words will admit. On the other hand, feeling it a duty to en-

force the payment of this branch of the revenue, judges oppose the admission of an instrument so constructed as to evade the payment of the stamp duty.

The main rule in the levying of these duties is that each distinct transaction between separate parties, recorded by a written instrument, shall have a separate stamp attached to it.

An agreement not under seal may be stamped within twenty-one days after it has been signed; but in all other cases the instrument must be written upon paper previously stamped; nor will the attaching a blank piece of paper properly stamped to the instrument already executed render the instrument admissible as evidence in a court of law. We shall presently mention the penalties by payment of which the severity of these provisions may be mitigated. The value of spoilt stamps, if claimed within twelve months, may be recovered, if the absence of all fraud is established on oath.

If the court has sufficient evidence that an instrument has been properly stamped, but has been lost, or is withheld by the opposite party, it will receive an unstamped copy as evidence. If a debt which has been contracted under a written agreement can be established by parole evidence, so that the existence of the agreement shall not come under the notice of the court, the plaintiff may recover without production of the agreement; but if the existence of the written agreement appears from the testimony of the plaintiff's witnesses, or from some condition coming into question which necessarily implies the existence of a written instrument, then the agreement must be produced as the best evidence; and the plaintiff cannot recover unless it is duly stamped. Nevertheless an unstamped instrument, such as a receipt or a signed account, may be used by a witness to refresh his memory as to the amounts paid in his presence or acknowledged in his presence to have been received; in such instances the case rests not on the document, but on the testimony of the witness.

An unstamped instrument, though an insufficient foundation for proceedings at law, may be used as evidence to defeat

fraud, and with certain limitations to establish a criminal charge. An unstamped agreement containing matter not requiring a stamp, may be used as evidence of that matter, although it is invalid as evidence of the terms of the agreement. An indictment for forgery likewise may be maintained, although the instrument forged may be invalid for want of a proper stamp; but such an invalid instrument is not sufficient to support an indictment for larceny.

Originally a stamp was invalid if the denomination was erroneous, although the amount paid was correct; but by the 55 Geo. III., wrong stamps, if of sufficient value, are rendered valid, unless upon the face of them they are appropriated to a different instrument from that to which they are attached. In this case the stamp is forfeited, but the instrument may be re-stamped upon payment of the penalty; by a previous act (37 Geo. III., c. 127, s. 2) any instrument, excepting bills and promissory notes, is allowed to be stamped upon payment of the duty, and a penalty of 10*l.* (or if it is a deed, 10*l.* for each skin); if it is to be stamped within a twelvemonth after its execution, the commissioners are allowed to remit the penalty (44 Geo. III., c. 19). Thus even during a trial an instrument may be stamped so as to render it admissible; but as this is rarely possible, it has been suggested that an officer of the court ought to be enabled to affix the proper stamp and levy the penalty; so that justice may not be defeated, or at least deferred, from the want of this formal circumstance.

The general principles which regulate the courts in the interpretation of the Stamp Acts are, that fraudulent evasion of the stamp duties shall be punished by forfeiture of all benefit from the document which ought to have been stamped; and that a just claim shall not be evaded or a fraud be effected because the just claimant has unintentionally violated the stamp laws.

The stamp duties and the custody of the dies are placed under the superintendence of commissioners appointed under the great seal. The 4 & 5 Wm. IV., c. 60, amended by 5 & 6 Wm. IV., c. 20,

consolidated the Board of Stamps. The commissioners transact their business in Somerset House, London. The endeavour to impose stamp duties upon our American colonies in 1765, was one of the approximate causes of the American revolution.

The law respecting stamps, and a reference to the principal cases cited, are contained in Chitty's *Practical Treatise on the Stamp Laws*. That work has been mainly used for this article.

The stamp duties act very unequally on small and on large transactions, and fully justify the statement that the legislature that imposed them were desirous to shift the burden of taxation from the rich to the middling classes. The stamp duty on the sale of land of the value of 50*l.* (taking a certain average length of conveyance) is 12½*l.* per cent.; of the value of 100*l.* it is 5 per cent.; of the value of 500*l.* it is 1*l.* 14*s.* 3*d.* per cent.; but of the value of 5000*l.* it is only one per cent. The same unequal scale applies to mortgages. "A mortgage of 50*l.* would cost in stamps and law expenses, 30 per cent.; a mortgage for 12,500*l.* would cost one per cent.; and for 100,000*l.* it would cost 12*s.* per cent." This scale of taxation is manifestly framed to shift the burden from great landowners and capitalists to those of very moderate means. These facts appear from a Report of a Committee of the Lords (1846) on the peculiar burdens which the land has to bear. The result of this inquiry shows clearly the peculiar burdens which the comparatively poor sustain in consequence of the legislation of the rich.

The net produce of the stamp duties in the year which ended October 10, 1844, was 6,533,385*l.*; in the year which ended October 10, 1845, it was 6,961,370*l.*

STANDING ORDERS. [BILL IN PARLIAMENT.]

STANNARY, from the Latin *Stannum*, "tin." This term sometimes denotes a tin-mine, sometimes the tin-mines of a district, sometimes the royal rights in respect of tin-mines within such district. But it is more commonly used as including the tin-mines within a particular district, the tanners employed in working them, and the customs and privileges

attached to the mines, and to those employed in digging and purifying the ore.

The great stannaries of England are those of Devon and Cornwall, of which the stannary of Cornwall is the more important. The stannaries of Cornwall and Devon, were granted by Edward III. to the Black Prince, upon the creation of the duchy of Cornwall, and are perpetually incorporated with that duchy. In general both stannaries are under one duchy-officer, called the lord-warden of the stannaries, with a separate vice-warden for each county. The stannary of Cornwall is subdivided into the stannary of Blackmore, in the eastern parts of the county, and the stannaries of Tywarnhaile, Penwith, and Huelston, in the west.

All tin in Cornwall and Devon, whoever might be the owner of the land, appears to have formerly belonged to the king, by a usage peculiar to these counties; for the general prerogative of the crown extends only to mines of gold or silver, or other mines in which the value of the gold or silver exceeds that of the inferior metal with which it is combined (12 Coke's *Rep.*, 9.)

King John, in 1201, granted a charter to his tanners in Cornwall and Devonshire, authorising them to dig tin and tannes to melt the tin anywhere in the moors and in the fees of bishops, abbots, and earls, as they had been used and accustomed. (Maddox, *Exch.*, 279 t. 283 l.) This charter was confirmed by Edward I., Richard II., and Henry IV.

In Cornwall the right of digging in other men's land is now regulated by a peculiar usage, called the custom of *bound ing*. This custom attaches only to such land as now is or antiently was *wastrel* that is, land open or uninclosed. The mode of acquiring a right to *tin-bounds* is this: an agent goes on the spot to be bounded and digs up the turf or surface, making little pits at the four corners towards the east, west, north, and south, of a reasonable extent; and the area or space within the four corners will be the contents of the bounds. Having made these corners, the agent describes on paper the situation of the bounds, states the day when, and the person by whom, they were marked out or cut, and makes a declara-

tion for whose use this was done, expressing therein that the spot was free of all lawful bounds. At the next stannary court he procures this description to be put on parchment, when a first proclamation is made of it in open court, the parchment, or paper being stuck up in a conspicuous place in the court, and a minute of the transaction is made by the steward in the regular court paper. On the next court day, three weeks afterwards, a second proclamation is in like manner made, and so also at the third court; when, if there be no successful opposition, judgment is given, and a writ of possession issues to the bailiff of the stannary, who delivers possession accordingly. In this mode the bound-owner, acquires a right to search for and take all the tin he can find, paying the lord of the soil one-fifteenth, or to permit others to do so; and to resist all who attempt to interrupt him. The bounds must be renewed annually, by a bounder employed on behalf of the bound-owner, or the lord may re-enter.

As part of the stannary rights, the duke of Cornwall, as grantee of the crown, has or had the pre-emption of tin throughout the county, a privilege supposed to have been reserved to the crown out of an original right of property in tin-mines, but in modern times it is never exercised.

Formerly for the redressing of grievances and the general regulation of the stannaries, representative assemblies of the tinnery were summoned both in Devonshire and in Cornwall. These assemblies were called parliaments, or convocations of tinnery, and were summoned by the lord-warden of the stannaries, under a writ, issued by the duke of Cornwall, or by the king, when there was no duke authorising, and requiring him so to do. The last convocation was held in 1752. (*Appendix to the case of Rowe v. Brenton*; 3 Manning and Ryland's *Reports*.)

The duties payable to the duke of Cornwall on the stamping or coinage of tin were abolished by 1 & 2 Vict. c. 120, and the stannary courts were re-modelled by 6 & 7 Wm. IV. c. 106. Further regulations for these courts have been introduced by 2 & 3 Vict. c. 58.

STAPLE, "anciently written *estaple*, cometh," says Lord Coke, "of the French

word *estape*, which signifies a mart or market." It appears to have been used to indicate those marts both in this country and at Bruges, Antwerp, Calais, &c., on the Continent, where the principal products of a country were sold. Probably in the first instance these were held at such places as possessed some convenience of situation for the purpose. Afterwards they appear to have been confirmed, or others appointed for the purpose by the authorities of the country. In England this was done by the king (2 Edw. III. c. 9). All merchandize sold for the purpose of exportation was compelled either to be sold at the staple, or afterwards brought there before exportation. This was done with the double view of accommodating the foreign merchants and also enabling the duties on exportation to be more conveniently and certainly collected. Afterwards the word staple was applied to the merchandize itself which was sold at the staple. The staple merchandize of England at these early times, when little manufacture was carried on here, is said by Lord Coke to have been wool, woolfells or sheepskins, leather, lead, and tin. Incident to the staple was a court called "the court of the mayor of the staple." This court was held for the convenience of the merchants, both native and foreign, attending the staple. It was of great antiquity; the date of its commencement does not appear to have been certainly known. Many early enactments exist regulating the proceedings at the staple and the court held there. Most of these were passed during the reigns of the two Edwards, the first and third of that name. These kings appear to have been extremely anxious to facilitate and encourage foreign commerce in this kingdom; and by these statutes great immunities and privileges are given, especially to foreign, but also to native merchants attending the staple. The first enactment of importance is called the Statute of Merchants, or the Statute of Acton-Burnel, and was passed in the 11th year of Edw. I., A.D. 1283. [BURNEL, ACTON, STATUTE OF.] The statute passed in the 27th year of Edw. III. cap. 2, is entitled the Statute of Staple. One object of it

was to remove the staple, previously held at Calais, to various towns in England, Wales, and Ireland, which are appointed by the statute. The statute directed proceedings similar to those prescribed for obtaining a Statute Merchant by means of a sealed recognizance, in consequence of which execution might be obtained against the lands and tenements of the debtor in the same manner as under a Statute Merchant.

A variety of other statutes were passed in the same and succeeding reigns, in some respects confirming, in others altering the provisions of the leading statute. As commerce became more extended, the staples appear to have fallen into disuse. Lord Coke, a great worshipper of antiquity, complains that in his time the staple had become a shadow; we have only now, he says, *stapulam umbratilem*, whereas formerly it was said that wealth followed the staple. The practice however of taking recognizances by statute staple, from the many advantages attending them, long continued. (11 Edw. I.; 27 Edw. III. caps. 1, 3, to 6, 8, 9; 2 *Inst.*, 322; *Com. Dig.*, tit. 'Stat. Staple'; 2 *Saund.* by Wms., 69; Reeves, *Hist. Eng. Law*, v. 2, pp. 161, 393.)

**STAR-CHAMBER.** The Star-Chamber is said to have been in early times one of the apartments of the king's palace at Westminster which was used for the despatch of public business. The Painted Chamber, the White Chamber, and the *Chambre Markolph* were occupied by the triers and receivers of petitions, and the king's council held its sittings in the *Camera Stellata*, or *Chambre des Estoylles*, which was so called probably from some remarkable feature in its architecture or embellishment. Whatever may be the etymology of the term, there can be little doubt that the court of Star-Chamber derived its name from the place in which it was holden. "The lords sitting in the Star-Chamber" is used as a well-known phrase in records of the time of Edward III., and the name became permanently attached to the jurisdiction, and continued long after the local situation of the court was changed.

The judicature of the court of Star-Chamber appears to have originated in

the exercise of a criminal and civil jurisdiction by the king's council, or by that section of it which Lord Hale calls the *Concilium Ordinarium* in order to distinguish it from the *Privy Council*, who were the deliberate advisers of the crown, (Hale's *Jurisdiction of the Lord's House*, chap. v.; Palgrave's *Essay on the Original Authority of the King's Council*.) This exercise of jurisdiction by the king's council was considered as an encroachment upon the common law, and being the subject of frequent complaint by the Commons, was greatly abridged by several acts of parliament in the reign of Edward III. It was discouraged also by the common-law judges, although they were usually members of the council; and from the joint operation of these and some other causes the power of the *Concilium Regis* as a court of justice had materially declined previously to the reign of Henry VII., although, as Lord Hale observes, there remain "some straggling foot-steps of their proceedings" till near that time. The statute of the 3 Henry VII. c. 1, empowered the chancellor, treasurer, and keeper of the privy-seal, or any two of them, calling to them a bishop and temporal lord of the council and the two chief justices, or two other justices in their absence (to whom the president of the council was added by stat. 21 Henry VIII. c. 20), upon bill or information exhibited to the lord chancellor or any other, against any person for maintenance, giving of liveries, and retainers by indentures or promises, or other embraceries, untrue demeanings of sheriffs in making panels and other untrue returns, for taking of money by juries, or for great riots or unlawful assemblies, to call the offenders before them and examine them, and punish them according to their demerits. The object and effect of this enactment are extremely doubtful; but it is perhaps the best opinion that the court created by the 3 Henry VII. c. 1, was not the court of Star-Chamber; that this court by statute fell into disuse after the middle of the reign of Henry VIII.; that the court of Star-Chamber was the old *concilium ordinarium*, against whose jurisdiction many statutes had been enacted from the time of Edward III., and that no part of the

jurisdiction exercised by the Star-Chamber could be maintained on the authority of the statute of Henry VII. At the beginning of the reign of Elizabeth, the court of Star-Chamber was unquestionably in full operation, in the form in which it was known in the succeeding reigns; and at this period, before it had degenerated into a mere engine of state, it was by no means destitute of utility. It was the only court in which great and powerful offenders had no means of setting at defiance the administration of justice or corrupting its course. And during the reign of Elizabeth, when the jurisdiction of the Star-Chamber had reached its maturity, it seems, except in political cases, to have been administered with wisdom and discretion. (Palgrave's *Essay on the King's Council*, p. 105.)

The proceedings in the Court of Star-Chamber were by information, or bill and answer; interrogatories in writing were also exhibited to the defendant and witnesses, which were answered on oath. The attorney-general had the power of exhibiting ex-officio informations; as had also the king's almoner to recover deodands and goods of a *felo-de-se*, which were supposed to go in support of the king's alms. In cases of confession by accused persons, the information and proceedings were oral; and hence arose one of the most oppressive abuses of the court in political prosecutions. The proceeding by written information and interrogatories was tedious and troublesome, often involving much nicety in pleading, and always requiring a degree of precision in setting forth the accusation, which was embarrassing in a state prosecution. It was with a view to these difficulties that Lord Bacon discouraged the king from adopting this mode of proceeding in the matter of the pursuivants, saying that "the Star Chamber without confession was long seas." (Bacon's *Works*, vol. iii. p. 372.) In political charges therefore the attorney-general derived a great advantage over the accused by proceeding *ore tenus* or orally. The consequence was, that no pains were spared to procure confessions, and pressure of every kind, including torture, was unscrupulously applied. According to the laws of the

court, no person could be orally charged unless he acknowledged his confession at the bar, "freely and voluntarily, without constraint." (Hudson's *Treatise of the Court of Star-Chamber*.) But this check upon confessions improperly obtained seems to have been much neglected in practice during the later periods of the history of this court. Upon admissions of immaterial circumstance aggravated and distorted into confessions of guilt, the Earl of Northumberland was prosecuted *ore tenus*, in the Star-Chamber, for being privy to the Gunpowder Plot, and was sentenced to pay a fine of 30,000*l.*, and to be imprisoned for life; "but by what rule," says Hudson (*Coll. Jurid.* vol. ii. p. 63), "that sentence was, I know not, for it was *ore tenus*, and yet not upon confession." And it frequently happened during the last century of the existence of the Star-Chamber, that enormous fines, imprisonments for life or during the king's pleasure, banishment, mutilation, and every variety of punishment short of death were inflicted by a court composed of members of the king's council, upon a mere oral proceeding, without hearing the accused, without a written charge or record of any kind, and without appeal.

The judges of the Court of Star-Chamber were the lord chancellor or lord keeper, who presided, and when the voices were equal gave the casting vote, the lord treasurer, the lord privy seal, and the president of the council, who were members of the court, *ex officio*. In addition to these were associated, in early periods of the history of the court, any peers of the realm who chose to attend. According to Sir Thomas Smith, the judges in his time were the "lord chancellor, the lord treasurer all the king's majesty's council, and the barons of this land." (*Commonwealth of England*, b. iii. c. 5.) Hudson states that the number of attendant judges "in the reigns of Henry VII. and Henry VIII. have been well near to forty; at some one time thirty; in the reign of Queen Elizabeth often times, but now (*i. e.* in the time of James I.) much lessened, since the barons and earls, not being privy councillors, have forborne

their attendance." He further states, that "in the times of Henry VII. and Henry VIII. the court was most commonly frequented by seven or eight bishops and prelates every sitting-day;" and adds, "that in those times, the fines trenching not to the destruction of the offender's estate, and utter ruin of him and his prosperity, as now they do, but to his correction and amendment, the clergy's song being of mercy." (*Coll. Jurid.* vol. ii. p. 36.) The settled course during the latter part of the reign of Elizabeth and the reigns of James I. and Charles I., seems to have been to admit only such peers as judges of the court as were members of the privy council.

The civil jurisdiction of the Star-Chamber comprehended mercantile controversies between English and foreign merchants, testamentary causes, and differences between the heads and commonalty of corporations, both lay and spiritual. The court also disposed of the claims of the king's almoner to deodands, and also such claims as were made by subjects to deodands and *catalla felonum* (chattels of felons) by virtue of charters from the crown. The criminal jurisdiction of the court was very extensive. If the king chose to remit the capital punishment, the court had jurisdiction to punish as crimes even treason, murder, and felony. Under the comprehensive name of contempts of the king's authority, all offences against the state were included. Forgery, perjury, riots, maintenance, embracery, fraud, libels, conspiracy, and false accusation, misconduct by judges, justices of the peace, sheriffs, jurors, and other persons connected with the administration of justice, were all punishable in the Star-Chamber.

It was also usual for the judges of assize, previously to their circuits, to repair to the Star-Chamber, and there to receive from the court directions respecting the enforcement or restraint of penal laws. Numerous instances of this unwarrantable interference with the administration of the criminal law occur with reference to the statutes against recusants in the reigns of Elizabeth and James I.

A court of criminal judicature, com-

posed of the immediate agents of the prerogative, possessing a jurisdiction very extensive, and at the same time imperfectly defined, and authorized to inflict any amount of punishment short of death, must, even when best administered, have always been viewed with apprehension and distrust; and accordingly in the earlier periods of its history we find constant remonstrances by the Commons against its encroachments. As civilization, knowledge, and power increased among the people, the jurisdiction of the lords of the council became intolerable. A measure which was introduced into the House of Commons in the last parliament of Charles I., to limit and regulate the authority of this court, terminated in a proposal for its entire abolition, which was eventually adopted without opposition in both Houses. The statute 16 Car. I. c. 10, after reciting Magna Charta and several early statutes in support of the ordinary system of judicature by the common law, goes on to state that "the judges of the Star-Chamber had not kept themselves within the points limited by the statute 3 Henry VII., but had undertaken to punish where no law warranted, and to make decrees having no such authority, and to inflict heavier punishments than by any law was warranted; and that the proceedings, censures, and decrees of that court had by experience been found to be an intolerable burthen to the subjects, and the means to introduce an arbitrary power and government." The statute then enacts, "that the said court called the Star-Chamber, and all jurisdiction, power, and authority belonging unto or exercised in the same court, or by any of the judges, officers, or ministers thereof, should be clearly and absolutely dissolved, taken away, and determined; and that all statutes giving such jurisdiction should be repealed."

STATE. [SOVEREIGNTY.]

STATES GENERAL. This term is from the French *Etats Généraux*, the assembly of the three orders of the kingdom: the clergy, the nobility, and the third estate. The States General of France were convoked in 1614 under Louis XIII., and they did not meet again till 1785. The memorable convocation



of the States General of France in 1789 led to the Revolution. A dispute arose between the two privileged orders and the third estate (*tiers état*) about their mode of sitting and voting. It was at first proposed by the Breton members that the third estate should assume the name of National Assembly without regard to the other two orders. Mirabeau opposed this proposition, but finally in the same year (17th June, 1789) the deputies of the *tiers état* with such deputies of the clergy as chose to join them, for none of the nobles accepted the invitation to join, assumed the name of the National Assembly, a term which had sometimes been used to designate the States General. The king, Louis XVI., afterwards sanctioned the union of the three estates in one National Assembly. One of the early acts of the National Assembly was the publication of the 'Declaration of the Rights of the Man and the Citizen,' a piece of absurd and incongruous declamation which Mirabeau's good sense made him despise, and all sober thinking people will be of his mind. [LIBERTY.] The National Assembly continued its labours several months after the death of Mirabeau, 2nd April, 1791. In September, 1791, the assembly presented to the king for his sanction the new constitution, which the king accepted, and the assembly dissolved itself on the 30th of the same month. The first National Assembly is generally called 'l'assemblée constituante,' from its having framed the constitution. The constitution lasted about twelve months, and was followed by the Republic.

STATISTICS is that department of political science which is concerned in collecting and arranging facts illustrative of the condition and resources of a state. To reason upon such facts and to draw conclusions from them is not within the province of statistics; but is the business of the statesman and of the political economist.

That it is necessary for a government, in order to govern well, to acquire information upon matters affecting the condition and interests of the people is obvious. Indeed, the civilization of a country may almost be measured by the completeness

of its statistics; for where valuable statistical records of ancient date are found concerning a country not yet advanced in civilization, which would appear to contradict this position, we owe them to sovereigns or governments of uncommon vigour and sagacity. However rude the government of a country may be, it cannot attempt to make laws without having acquired the means of forming a judgment, however imperfect, as to the matters brought under its consideration. In this sense statistics may be said to be coeval with legislation; but as legislation has rarely been conducted upon any fixed principles, or partaken of the character of science, in the earlier ages of the world, we must attribute to statistics, as a department of political science, a much later origin. It is chiefly to the rise of political economy that we are indebted for the cultivation of statistics. The principles of that science, which are directly concerned about the prosperity and happiness of mankind, were not reduced to any system until the middle of the last century: since that time, political economy has been cultivated as an inductive science. The correctness of preconceived theories has been tested by the observation and analysis of facts; and new principles have been discovered and established by the same means. A limited knowledge of facts had previously been an obstacle to the progress of political economy; and, on the other hand, the neglect of that science caused indifference to statistical inquiries. Statistics, which had been neglected until political economy rose into favour, have since been cultivated with continually increasing care and method, as that science has been further developed, and the knowledge of its fundamental principles more widely diffused.

This connection between political theories and statistics, while it has led to the collection of many data which would not otherwise have been obtained, has often introduced a partial and deceptive statement of facts, in order to support preconceived opinions. This is sometimes unjustly objected to statistics, as if it were a defect peculiar to them. That facilities for deception are afforded by statistics

cannot be denied; but fallacies of this kind, like all others, are open to scrutiny and exposure. Reliance need not be placed upon statements of facts nor on numbers, unless supported by evidence; and inferences from them should only be admitted according to the rules by which all sound reasoning is governed. Fallacies are difficult to detect in proportion to the ingenuity of the sophist and the ignorance or inexpertness of his opponents; but in political matters, opposite theories and opinions are maintained with equal ability, and facts and arguments are investigated with so much jealousy, that, in the end, truth can hardly fail to be established. Neither does any suspicion of partiality attach to such facts as are collected by a government without reference to particular theories. Until some one has shown the value of noting a certain class of facts with a view to his own inquiries, no pains are taken to obtain information of that nature from the best sources; but as soon as the importance of seeking any data is acknowledged, the collection of them becomes the business of impartial persons. The statist must be acquainted with the purposes to which the facts collected and arranged by him are likely to be applied, in order that the proper distinctions and details may be noted in such a manner as to give the fullest means of analysis and inference; but his services are greatest when he does not labour in support of a theory.

It thus becomes part of the business of government to apply all the means in its power in aid of statistics, not only for the administration of the affairs of state, but also for the improvement of political science. Abundance and accuracy must be the object of a government in collecting statistical facts.

We would lay much stress upon the collection of facts by the supreme power, because the classes of facts most important in political inquiries can scarcely ever be searched out by other persons, who have not access to the offices of government, and who are without authority to demand information; while the government has ample means at its disposal, and can, without difficulty, and in the ordinary course of administration, obtain statis-

tical information of the highest value. In this and many other countries the respective governments are applying themselves earnestly to statistical investigations. In England a statistical department has been established at the Board of Trade to collect and arrange all the documents of a statistical nature that can be obtained through any department or agency of government. The admirably organised departments of the French government have abundance of statistical materials systematically collected, which they never fail to arrange in a very lucid manner, and to analyse with much ability. Great credit is due to the Belgian government for the diligence with which its several departments have engaged in statistics; and in March, 1841, the king appointed a central statistical commission. "The object of this commission," said the minister of the interior, in his Report to the king, "will be to bring together in one common depository all the scattered information which is at present collected by the different departments of government; and it will propose models for the statements and tables employed in collecting and classifying the elements of official publications." He adds, that "if the commission carries out satisfactorily the object proposed, the government, the legislative chambers, and the country, will find in the official statistical publications, authentic documents calculated to throw light on all matters of discussion, to encourage useful works, and to make known annually the situation, the strength, and the material and moral resources of the kingdom." The useful results of this commission, it may be hoped, will not be confined to Belgium. The world at large is interested in the statistics of any country; and improved methods of conducting statistical inquiries must be generally applicable.

But while governments are thus engaged, there is ample room for the labours of individuals. Local statistics of all kinds are open to them. The books and records of public institutions, facts relating to particular trades, to the moral and social state of different classes of society, and other matters apparently of local interest only, often present results

as important as those derived from inquiries on a more extended scale. Good service also may often be done by a judicious selection and comparison of matters not brought together in official statements, with a view to the illustration of principles of science or experiments in legislation, and by suggestions and criticism, which may direct the attention of government to particular branches of inquiry, to improvements in the mode of carrying them on, or in the form in which they are published.

It would be useless to attempt an enumeration of the various matters that are included in the province of statistics, but for the more convenient consideration of the subject it may be divided into—1, Historical statistics, or facts illustrative of the former condition of a state; 2, Statistics of population; 3, of revenue; 4, of trade, commerce, and navigation; 5, of the moral, social, and physical condition of the people. Each of these divisions will furnish ample materials for inquiry. The article CENSUS will serve as an example of the use to which such materials may be applied, and the article INTERMENT.

**STATUTE.** Bills which have passed through the houses of lords and commons and received the royal assent become Acts of parliament, and are sometimes spoken of collectively as forming the body of statutes of the realm. But a more restricted application of the word is generally in use, by which private acts of parliament [BILL IN PARLIAMENT] are excluded, and even public acts when their purpose is temporary. The application is still more restricted when the measures of the early parliaments are the subject in question, for many acts passed and received the royal assent which belong to the class of public acts and are found at large on the Rolls of Parliament, which are not accounted statutes in the sense in which that word is ordinarily used.

No strict definition can be given of those results of the deliberations in parliament to which the king has signified his assent, which are now called the Statutes of the realm. We may distinguish them from other enactments of early

times, as follows: they were at a very remote period separated from the rest, written in books apart from the rest, and received by the courts of law as of equal authority with the antient customs of the realm.

Probably also they have, with very few exceptions, a more general bearing than the other public acts which are found upon the rolls of parliament.

Three volumes, preserved in the court of Exchequer, and now in the custody of the Master of the Rolls, contain the body of those enactments which are called statutes. One volume contains the statutes passed before the beginning of the reign of Edward III.; and the other two, those from 1 Edward III. to 7 Henry VIII., all very fairly written. These may be considered as the manuscripts of the early statutes of superior value, if not of superior antiquity as to the earlier portions, to the many similar collections which are in the libraries of the Inns of court, of the universities, of the British Museum, and in some other depositories public and private. These numerous manuscript copies of the statutes are in substance pretty nearly the same, though some of these collections contain statutes which are not admitted into others. These books are not considered in the light of authorised enrolments of the statutes. For the authentic and authoritative copies, if any question arises, recourse must be had (1) to what are called the Statute Rolls at the Tower, which are six rolls containing the statutes from 6 Edward I. to 8 Edward IV., except from 8 to 25 Henry VI.; (2) to the enrolments of acts of parliament which are preserved at the Rolls chapel from 1 Richard III.; (3) to exemplifications and transcripts with writs annexed, signifying that they were transmitted by authority to certain courts or other parties, who were required to take notice of them, of which many remain in the Exchequer and elsewhere; (4) in those since 12 Henry VII., to the original acts in the parliament office; (5) the rolls and journals of parliament; (6) the close, patent, fine, and charter rolls at the Tower; on which statutes are sometimes found.

With the parliament of the reign of

Richard III. began the practice of printing, and in that manner publishing, the acts passed in each session. This followed very soon on the introduction of printing into England. Before that time it had been a frequent practice to transmit copies of the acts as passed to the sheriffs of the different shrievalties to be by them promulgated. The practice of printing the sessional statutes has continued to the present time.

Before the first of Richard III. the aid of the press had been called in to give extended circulation to the older statutes. Before 1481 it is believed that an abridgment of the statutes was printed by Letton and Machlinia, which contains none later than 33 Henry VI., 1455. To the next year is assigned, by those who have considered this subject, a collection, not abridged, from 1 Edward III. to 22 Edward IV. Next to these in point of antiquity is to be placed a collection printed by Pynson about 1497, who also, in 1508, printed what he entitled '*Antiqua Statuta*,' containing *Magna Charta*, *Charta de Foresta*, the *Statutes of Merton*, *Marlbridge*, and *Westminster primum* and *secundum*. This was the first publication of those very early statutes.

In the reign of Henry VIII. the first English abridgment of the statutes was printed by Rastall; and during that reign and in the succeeding half century there were numerous impressions published of the old and recent statutes in the original Latin and French, or in English translations. Barker, about 1587, first used the title '*Statutes at Large*.'

In 1618 two large collections of statutes, ending in 7 James I., were published, called *Rastall's* and *Pulton's*. *Pulton's* collection was several times reprinted with additions.

In the eighteenth century an addition, in six folio volumes, was published by Mr. Serjeant Hawkins in 1735, containing the statutes to 7 George II. Cay's edition, in 1758, in the same number of volumes, contains the statutes to 30 George II. Continuations of these works were published as fresh statutes were passed; and another work in 4to., of the same kind, was begun in 1762, well known by the designation of *Ruffhead's*

'*Statutes at Large*.' Pickering's edition is in 8vo., and ends with 1 George III.

None of these collections had ever been published by authority of the state, and though able men had been employed upon them, they have been thought by many competent judges not adequate to the importance of the subject, and to be liable moreover to some serious objections. This led a committee of the House of Commons, who, in 1800, were appointed to inquire into the state of the Public Records, to recommend, among other things, that "a complete and authoritative edition of all the statutes should be published." When the commission was appointed for carrying into effect the recommendations of this committee, they proceeded to the execution of this project; and finally, between the years 1810 and 1824, they produced, in a series of large volumes, a critical edition of the statutes (including the early public charters), ending with the close of the reign of Queen Anne. This is what is now considered the most *authentic* edition of the statutes, and it is supplied with a valuable index. It forms ten folio volumes. In the large introduction to that work there is a more particular account of the former editions of the statutes and of the means for making such a work as this complete.

The statutes passed in the Imperial Parliament of Great Britain are printed by the queen's printers, in foolscap folio, and sold at the Act Office, near Gough Square, Fleet Street, London, in separate acts, at the rate of three halfpence a sheet (4 pages) for public acts and three pence a sheet for private acts. An 8vo. edition is also published, which is sold at the rate of one penny a sheet (16 pages 8vo.), at Richards's, in Fleet Street, London, and any sheet or sheets may be purchased, so as to include one or more acts. The acts are not published separately in this edition, as they are in the folio edition.

The statutes of the realm are generally divided into two classes—Public and Private [PARLIAMENT, p. 468]; but they may more conveniently be distributed into three classes—Public General, Public Local, and Private. The two former only come within the term "laws," in the pro-

per acceptance of the term. The private acts embody special privileges conferred on individuals, or the sanction of the legislature to private arrangements regarding property; and before they can be enforced, they must be pleaded before the courts of law, like contracts, or the titles of estates. The Public Local statutes, though published separately, and though the standing orders of the Houses of Parliament require that on account of the private interests which they are often likely to affect, certain preliminary notices and other proceedings should take place before they are passed through their stages, are yet, in contemplation of law, in the same position as the Public General Statutes. Formerly all the public statutes, local and general, were published together and numbered consecutively; but from the year 1798 downwards, the local acts have been separately enumerated in distinct volumes. The legislation of a session generally fills one volume with general, and three or four with local statutes. The latter are not always the more numerous, but from the quantity of detailed arrangements regarding local places and circumstances, and the rights and obligations of parties embodied in them, they are generally much larger than the general statutes. As, from the quantity of railway and other joint-stock schemes this branch of legislation is rapidly increasing, the means of simplifying and abbreviating it have occupied the attention of law reformers, and some steps have been taken to accomplish this end. It had been observed that there are some clauses that are or ought to be common to all local acts. In embodying the matters which should be of the same character in every one of the local statutes, different draftsmen used different expressions; and the courts of law had on this account often to give a practically different effect to clauses which were intended to accomplish the same thing. Great intricacy and confusion were thus gradually finding their way into the institutions of the country; and in a considerable department of the law of the United Kingdom, Voltaire's sarcasm on the provincial laws of France, that a traveller changes laws as often as

he changes horses, was likely to be verified. During the session of parliament of 1845 an effort was made to remedy this defect in local legislation. Three public general acts were passed, of which the following are the titles: 'An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature;' 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the taking of Lands for Undertakings of a public Nature;' and 'An Act for consolidating in one Act certain Provisions usually inserted in Acts authorising the making of Railways.' To prevent confusion, a distinct series of these acts was passed applicable to Scotland. In each of these Acts there is a provision that it shall have reference to all local acts for the undertakings to which it applies. "And all the provisions of this Act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorised thereby so far as the same shall be applicable to such undertaking; and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act." It is hoped that this arrangement may in some measure economise local legislation; but its most important influence will be in the production of uniformity in the law of joint-stock companies authorised by statute.

STATUTE (SCOTLAND). It would be difficult to explain the character of the older legislation of Scotland, the method in which it was sanctioned, or the constitution of the bodies by which it was passed. All the light that probably is to be obtained on the early history of the statute-law has lately been embodied by Mr. Innes, in his preface to the edition of the 'Scottish Statutes and old Laws,' published by the Record Commission. "Whatever," he says, "may be the case in other countries, it is not easy in Scotland to distinguish the ancient legislative court or council of the sovereign from that which discharged

the duty of counselling the king in judicial proceedings. The early lawgivers, indeed, enacted statutes by the advice of the 'bishops, earls, thanes, and whole community, or 'through the common counsel of the Kynryk;' but during the reigns previous to Alexander III. we find the king also deciding causes in a similar assembly of magnates: while laws of the greatest importance, and affecting the interests of whole classes of the community, bear to be enacted by the king and 'his judges.' It is probable that the practice of the assembly, legislative or judicial, of the principal barons, though irregular, was in general an imitation of the parliament of England. Before the war of independence the lands of the southern districts of Scotland had been in a great measure partitioned among Norman adventurers, some of whom owed a double allegiance to the crowns both of England and Scotland; and it was natural that they should bring with them the practices and opinions of the country with which they were earliest connected. A large proportion of the lowland population of Scotland were at the same time Saxon refugees from England. So early as the reign of David I. (1125) we begin to find that the municipal corporations had a voice in the ratification of the laws. "The parliament," says Mr. Innes, "assembled by John Balliol at Scone, on the 9th of February, 1292, was probably the first of the national councils of Scotland which bore that name in the country at the time, although later historians have bestowed it freely on all assemblies of a legislative character. We have no reason to believe that any change in its constitution occasioned the adoption of the new term, which soon became in Scotland, as in England, the received designation of the great legislative council solemnly assembled. It was not till a few years later, on occasion of negotiating an alliance with France, that Balliol, probably at the desire of the French king, procured the treaty to be ratified, not only by the prelates, earls, and barons, but by certain of the burghs of his kingdom. That treaty was finally ratified at Dunfermline on the 23rd day of February, 1295; and the seals of six burghs were then affixed

to the deed, along with those of four bishops, four monasteries, four earls, and eleven barons. Notwithstanding this very formal ratification, however, it may be doubted, both from the peculiar phraseology of the deed itself, and from the silence of historians as to any meeting of a parliamentary nature in which it could have been voted, whether the parties stated as consenting, and especially whether representatives of those six burghs, were actually present as in a national assembly or parliament."

The acts which were thus sanctioned—sometimes, perhaps, by the separate adhesion of the principal interests of the country, sometimes in assemblies—were of a mixed character. Some were judgments in particular disputes, accompanied probably by the announcement of a principle on which such questions should thenceforth be decided; others were acts of executive authority; and others might be regulations having the character of fixed and general laws. When these proceedings related to matters of private right, the recording instrument would be put into the hands of the party interested. "When the proceedings of the national council," says the authority already cited, "related to matters of a more public nature, such as negotiations with foreign states, its earliest records were probably of a similar kind, and consisted of nothing more than the indentures or other diplomacy which embodied the results of its deliberations. Perhaps the earliest instances of this kind that now remain are those important deeds of the reign of Alexander III., when, however, a more artificial system must have been beginning to prevail. It would be still more interesting to ascertain the modes in which the more general ordinances and laws of the realm were enacted and recorded; but on this head the loss of every original document has left us entirely to conjecture. Judging, however, from the mutilated and imperfect transcripts of a later age, and from the analogy of the other states of Europe, it would appear that the more important and general statutes were framed into short capitulars, and ingrossed into a writ, addressed, in the name of the king, to the chief ministers

of the law in the different districts of the kingdom, requiring the publication and observance of them. The laws of the burghs, the assizes of David I. and of William, and the statutes of Alexander II., as found in the old manuscript compilations of lawyers, seem to be the fragments of various capitulars of this kind." The assizes of David I., 'Assisé Regis David,' are reported to be the oldest fragments of legislation in Scotland, and are partly, but not entirely, traceable to so early a period as the reign of the king with whose name they are associated. The burghal laws, 'Leges Quatuor Burgorum,' constitute the oldest systematic collection of laws. They too may be referred to the reign of David, and though historians give him the credit of having planned the whole system of the municipal corporations, it is more likely that this code of laws embodies the privileges and restrictions which had gradually come into existence with the growing influence of the burghs. The coincidence between these early vestiges of Scottish legislation and the old law of England is remarkable. Both in the assize, and in the burgh laws, technical phraseology is frequently used, which still belongs to the law and practice of England, but has long been disused in Scotland. Indeed, it is very clear that, before the attempt of Edward I. to be master of Scotland, there was much harmony in tone and spirit between the two nations, and that Scotland generally followed or accompanied England in her constitutional progress. There is a still more remarkable coincidence of legislation in the celebrated *Regiam Majestatem*, or general code of the old laws of Scotland. It was, like the fragments mentioned above, attributed to David I., who had obtained the character of the Justinian of Scotland; but it is undoubtedly of later date. In the sixteenth and seventeenth centuries it was very popular, as an undoubted early national code; but it was subsequently discovered to have many features in common with the compilation, 'De Legibus et Consuetudinibus Angliæ,' attributed to Ranalph de Glanvil, justiciar of England, and then it acquired the evil reputation of being a code prepared by Edward I., for the purpose of

subjecting Scotland to the law of England. "Upon an accurate collation of the books," says Mr. Innes, "it appears that the fourteen books of Glanvil contain in systematic arrangement, with some inconsiderable exceptions, the same matter, almost in the same words, which the compiler of the 'Regiam' has put into four books (in imitation of the Institutes of the Roman law), but divested of all systematic order. Many minute variations are found, and when these are intentional, they are plainly caused by a desire to suit the text of the English law-book to the local circumstances of Scotland; when they have happened accidentally, the vitiated or unintelligible text of the Scotch book is readily corrected by a comparison with the English author. There are, however, chapters in the 'Regiam' which are not in Glanvil. Part of these are extracts from the civil and canon law, and the remainder, joined inartificially to the surrounding text, appear to be genuine chapters of antient Scotch laws, most of which can be traced to their sources in the statutes of the early kings now collected." Mr. Innes does not believe in the theory that the 'Regiam' was prepared under the authority of Edward I., but thinks its resemblance to the English compilation may be attributed to the spirit of imitation.

The 'Regiam Majestatem,' so named from the words with which it commences, is, along with the burgh laws, and other vestiges of early legislation, printed in the first volume of the edition of the Scottish statutes issued by the Record Commission. None of the contents of this first volume, however, come within the description of the accepted statute law of Scotland. They are curious vestiges of constitutional history; and if it be necessary for ascertaining the just application of any settled principle of law by a reference to its origin, these old collections are sometimes referred to; but they are not admitted as direct authority in the substance of the law. In 1566 a commission was issued for the collection and publication of the statute law, and they speedily published a series of statutes reaching from 1424 to 1564. It is at the former date that the statute law, properly speaking, commences, and it

proceeds thence in a regular series to the Union with England. Several of the most important statutes still in force—as, for instance, that which secures to the agricultural tenant the continuance of his lease, notwithstanding the death of the landlord by whom it may have been granted—date back to the earlier part of the fifteenth century. The Scottish acts are referred to by the date of the parliament in which they are passed, and their numerical order; as, ‘The Act 1424, c. 25;’ ‘The Act 1661, c. 16.’ The early statutes are brief and sententious, and were admired by Bacon for “their excellent brevity.” The following are two successive Acts of the Parliament of 1424, given in full:—

“Item, it is decreetted be the haill parliament, and forbidden be our soveraine lorde the king, that ony leagues or bandes be maid amongst his lieges in the realme; and gif onie has bene maid in time bygane, that they be not kept nor halden in time to cum.”

“Item, it is ordained that na horse be sauld out of the realme, quhill at the least they be three yeir auld outgane, under the peine of escheitte of them to the king.”

From the date of the accession of Bruce, after the war with England, the Scots long entertained a feeling of national jealousy and enmity towards England; and though some of the kings introduced Southern practices, we do not find that steady imitation and adoption of the constitutional movements of the English parliament which characterise the earlier period, but rather an isolated creation of, and adherence to, national peculiarities. The Scottish parliament was not divided like the English into two houses, but the three estates—the clergy, the barons and other freeholders, and the burgesses—formed one assemblage. The method of conducting legislative business was very different from that which came into use in England. At the commencement of the sittings a committee was chosen, called Lords of the Articles, who had the duty of preparing and arranging the matters to be laid before the House for its approval. It thus appears to have generally happened that the full assemblage only

met on the first and the last days of a session: on the former the lords of the articles were chosen; on the latter, the statutes or other proceedings prepared by this committee were voted on, and sanctioned or rejected. The royal assent was given by touching the act with the sceptre; but some constitutional writers maintain that this was a mere court ceremony, and that an act which had passed the three estates became law without any sanction from the king. It became a principle which widely distinguished the legislation of Scotland from that of England, that in the former country statutes might cease to be law by merely falling into desuetude. Of the statutes of the Scottish parliament, those only are now law which are said to be *in viridi observantiâ*. By this principle the statute law has silently modified itself to the character of the times; and, though not formally repealed, the barbarous laws of periods of bigotry or violence have ceased to be enforceable. Since the Union of 1707, it has been considered, in conformity with the English doctrine, that an act passed by the British parliament must be held as law, and judicially enforceable, until it is repealed.

The law of Scotland, the judicial and executive system, and the ecclesiastical polity, being quite distinct from the corresponding institutions of England, many statutes are from time to time passed by the British legislature solely applicable to Scotland, prepared by persons professionally acquainted with the institutions of that part of the empire. The revenue laws of Scotland were formerly distinct; but now, with few exceptions, one system embodied in one series of acts applies to the United Kingdom. In matters of national policy, and frequently in the criminal law and in legislation for internal economy, acts are made applicable both to England and Scotland at the same time. In these departments of legislation much confusion has arisen from its either being left doubtful whether a statute applies to Scotland, or from terms being used which are not the proper technical phraseology of Scottish law. This uncertainty has been a considerable source of litigation in Scotland; and the courts have



been, from the want of uniformity in the composition of the statutes, hitherto unable to form any rule serving as a criterion for the extension of such acts to Scotland. In many cases—such as the Bankrupt Act, the Tithes Commutation Act, &c.—the institutions to which the legislation refers distinctly limit its application to England. In other instances, however, general laws are made which are as applicable to Scotland as to England, while the machinery by which the act directs them to be enforced is to be found only in England. In many instances these acts have only been capable of enforcement in Scotland by reading, instead of English institutions, those of Scotland which most nearly correspond with them—as, by substituting “The Court of Session” for “The Courts of Record at Westminster.” The remedy for this evil appears to be, to incorporate with each act a clause stating the territorial extent of its application; and, whenever it is intended that it shall apply to Scotland, to have clauses especially applicable to its enforcement in that part of the empire.

**STATUTE (IRELAND).** In Ireland, the method by which the early irregular convocations, called Parliaments, passed their acts, appears to have been a close imitation of the English practice. The authenticated printed statutes begin in the year 1310—3 Edw. II. After five short acts of this parliament there is a hiatus until the year 1429, although it is known in history that repeated parliaments were held in the interval. Many of these statutes are characteristic indications of the state of the country, and throw light on the domination of the English over the natives—e.g., the 25 Hen. VI. c. 4, ‘An Act, that he that will be taken for an Englishman, shall not use a Beard upon his upper Lip alone; the Offender shall be taken as an Irish Enemy.’ 28 Hen. VI. c. 3, ‘An Act, that it shall be lawful for every Liegeman to kill or take notorious Thieves, and Thieves found robbing, spoiling, or breaking Houses, or taken with the manner:’ and in later times (the 7 Wm. III. c. 21), ‘An Act for the better suppressing Tories, Robbers, and

Rapparees; and for preventing Robberies, Burglaries, and other heinous Crimes.’ The Statute of Drogheda, commonly called Poyning’s Law, passed in 1495 (10 Hen. VII.), had a marked influence on the later legislation and constitutional history of Ireland. By chap. 22 it was enacted, that all the acts then or late passed in England, “concerning or belonging to the common and public weal of the same,” should be law in Ireland. By chap. 4 it was provided, that no parliament should afterwards be held in Ireland until the lord-lieutenant and council had certified the king of the causes and considerations for holding it, and of the acts proposed to be passed at it, and a licence had been obtained from England accordingly. Thus no measure could be proposed for the adoption of parliament until it had first received the royal assent in England. It is believed that this badge of servitude prevented the passing of many exterminating acts, which, in times of anarchy, discord, or tyranny, the Irish ministry, and their partisan-parliaments, would have readily passed. This act was repealed, and the independence of the Irish legislature restored by the celebrated measure of 1783. By the Act of Union, in 1800, the Irish Parliament was merged in the United Parliament of Great Britain and Ireland. [PARLIAMENT OF IRELAND.]

**STATUTE OF FRAUDS.** This name is applicable to any statute the object of which is to prevent fraud, but it is particularly applied to the 29 Car. II. c. 3, which is entitled the ‘Statute of Frauds and Perjuries.’ One object of the statute was to prevent disputes and frauds by requiring in many cases written evidence of an agreement. Before the passing of this statute many conveyances of land were made without any writing as evidence of the conveyance. An estate in fee-simple could be conveyed by livery of seisin, accompanied with proper words, and a use could also be declared by parol. No writing was necessary to convey any estate in possession, for such estate is technically said to lie in livery; but a reversion could only be conveyed by deed. The Statute of Frauds declared that all leases, estates, and in

terests of freehold or terms of years or any uncertain interest in any lands or hereditaments, made by livery and seisin only, or by parol, and not put in writing and signed by the parties, &c., shall have the force of leases or estates at will only. But leases for not more than three years, whereon the rent reserved shall be two-thirds of the full improved value of the thing demised, are excepted by the statute. Further, no lease, estates, or interest either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest, shall be assigned, granted, or surrendered except by deed or note in writing. Another section of the statute provides that all declarations or creations of trust or confidences of any land, tenements, or hereditaments shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or they shall be void. The 5th section of this statute declared that all devices of lands or tenements, as more particularly described in this section, should be in writing and signed in the manner here prescribed by three or four credible witnesses; and the 6th section related to the revocation of a devise in writing of lands or tenements. Both these sections are repealed by the last Wills' Act, 1 Vict. c. 26, which makes alterations in other provisions also of the Statute of Frauds.

There are several other important provisions in this statute, which may be omitted here, as the object is to show merely that the purpose of the statute is to prevent fraud by requiring the evidence of writing, which is a better kind of evidence than men's memory.

STATUTE MERCHANT. [BUR-  
NEL, ACTON, STATUTE OF.]

STATUTE STAPLE. [STAPLE].

STATUTES OF LIMITATION.

There appear to have been no times limited by the common law within which actions might be brought; for though it is said by Bracton (lib. 2, fol. 228), that, "omnes actiones in mundo infra certa tempora limitationem habent;" yet with the exception of the period of a year and a day, mentioned by Spelman (*Gloss.*, 32), as fixed by the antient law for the

heir of a tenant to claim after the death of his ancestor, and for the tenant to make his claim upon a disseisor, all the limitations of actions in the English law have been established by statute. Certain remarkable periods were first fixed upon, within which the cause of action must have arisen. Thus in the time of Henry III., the limitations in a writ of right, which was then from the time of Henry I., was by the Statute of Merton, c. 8, reduced to the time of Henry II.; and by the Statute of Westminster, 1, c. 8, the period within which writs of right might be sued out was brought down to the time of Richard I. (*Co. Lit.*, 114, b.)

Since the 4 Hen. VII., c. 24, which limited the time within which persons might make their claim to land of which a fine had been levied with proclamations, various statutes have been passed for the purpose of limiting the time within which actions and suits relating to real property may be commenced. The 21 Jac. I., c. 16, limited the period for all writs of formodon to twenty years; and it was enacted generally that no person should make entry into any lands, but within twenty years next after his right of entry accrued. The act contained a saving of the rights of certain persons therein enumerated.

By the 9 Geo. III. c. 16, the right of the crown to sue or implead for any manors, lands, or other hereditaments (except liberties or franchises) was limited to sixty years. Before this act, the rule that *nullum tempus occurrit regi* was universal; and it still prevails as a maxim of law, except where abridged by statute. The same maxim applies to the duchy of Cornwall, which, though it vests in the crown from time to time, so long as there is no eldest son of the king, or other person entitled to the dignity, is not within the above statute.

The next statute upon this subject is the important act of the 3 and 4 Wm. IV. c. 27, by which great changes were made in the remedies for trying the rights to real property, and which embodies the greater part of the present law of limitations relating thereto.

By section 2, no person can make an entry or distress, or bring an action to

recover any land or rent, but within twenty years after the right to make such entry or distress, or bring such action, has accrued to the claimant, or some person through whom he claims. The meaning of the terms "land," "rent," and "person," is explained in the first section of this act. It is sufficient to state here the general object of the act. The explanation of its particular provisions belongs to law treatises.

An administrator for the purposes of this act is to claim from the death of the intestate (sect. 6). This section removes, for the purposes of the act, that distinction which existed, under the old law, between executors and administrators, by which the right of the former was considered to commence from the death of the testator, and that of the latter from the grant of administration.

The enactments contained in the sections from the 3rd to the 13th included, are intended to remove one of the great difficulties that attended the investigation of titles under the old law, namely, the determination of the time at which adverse possession commenced. Whether possession was adverse or not, was frequently a question of fact to be determined by a jury, and subject to great uncertainty, and the question was often further embarrassed by the various rules of law, as well as by the principle formerly laid down, that possession, rightful in its commencement, did not become wrongful or adverse as against the true owner by being continued beyond the period at which the right of the party in possession ceased.

Persons under the disability of infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence beyond seas, or persons claiming under them, notwithstanding the period of twenty years shall have expired, are to be allowed ten years after the person to whom the right first accrued has ceased to be under any disability or has died (which shall have first happened) (sect. 16). It is to be observed that imprisonment is not a disability under this act, as it was under 21 Jac. I. c. 16, s. 2.

But no entry, distress, or action is to be made or brought by any person under

disability at the time of his right accruing, or by any person claiming under him, but within forty years from the time at which the right first accrued, though such disability should have continued during the whole of such forty years, or although the term of ten years from the time at which the person to whom the right first accrued ceased to be under any disability, or died, should not have expired (sect. 17).

In the case of a person under disability at the time that his right accrued dying under such disability, no further time beyond the said term of twenty years next after the right accrued, or the said term of ten years after the death of such person, is to be allowed by reason of the disability of any other person (sect. 18).

No part of Great Britain and Ireland, nor the adjacent islands, is to be deemed beyond seas, within the meaning of the act (sect. 19).

No suit in equity is to be brought for the recovery of any land or rent but within the time when the plaintiff, if entitled at law, might have brought an action (sect. 24). This clause confirms the doctrine already established in courts of equity.

In cases of express trust, the right of the *cestuy que trust* to bring a suit against a trustee, or person claiming through him, is not to be deemed to have accrued till a conveyance has been made to a purchaser for a valuable consideration, and then only as against such purchaser and persons claiming under him (sect. 26). In cases of express trust, no time, as between the *cestuy que trust* and trustee, can operate as a bar to the right of the former; and the above-mentioned clause applies as between the *cestuy que trust* and strangers only. The possession of the trustee is that of the *cestuy que trust*, and the possession of the *cestuy que trust* cannot be adverse to the trustee, unless where there has been actual ouster of the trustee by the *cestuy que trust*, or where the latter denies the title of the trustee. Though no time bars a direct trust, as between trustee and *cestuy que trust*, a court of equity will not allow a man to make out a case of constructive trust at a great distance of time, and after

long acquiescence, but will in such cases apply rules as to length of time by analogy to the statutes of limitation. (17 Ves., 97.)

In cases of concealed fraud, the right of a person to bring a suit in equity for the recovery of land or rent of which he, or the person through whom he claims, has been deprived by such fraud, is to be deemed to have accrued at the time when the fraud was, or, with reasonable diligence, might have been discovered; but nothing in this clause is to affect the title of a purchaser for valuable consideration who was not a party to the fraud, and had, at the time of his purchase, no notice of such fraud (sect. 26). This principle had already been established in courts of equity.

By section 36, all real and mixed actions, except Ejectment, and the actions of Dower and Quare Impedit, were abolished after the 31st of December 1834.

Since the 31st of December, 1833, no money secured upon land by any mortgage, judgment, lien, or otherwise, or charged upon land by way of legacy, can be recovered by action or suit, but within twenty years after the right to receive the same accrued, unless in the meantime some part of the money or interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person liable to payment or his agent, to the person entitled thereto or his agent; in which case the action or suit must be brought within twenty years after such payment or acknowledgment (sect 40). This clause is a statutory confirmation of what was formerly established by decision as to money secured upon land; namely, that possession of the land by the mortgagor or person otherwise liable for payment of the money, without payment or demand of principal or interest for twenty years, was sufficient to raise the presumption of satisfaction. It has been determined that the limitation in this clause applies to bills of foreclosure, which are in substance suits to recover the money secured by mortgage. (9 Sim., 570.) With respect to legacies, there has been some variety of decision. Formerly it seems to have been thought that there was no limitation as to the time within

which a legacy might be demanded, but in the later cases the courts of equity appear to have adopted twenty years as the limit.

The above-mentioned section secures to the mortgagee to whom a payment of principal or interest has been made, or an acknowledgment in writing has been given, his right of action or suit as to the money for twenty years from the time of such payment or acknowledgment, and in the latter case his right of entry, distress, or action for the recovery of the land is during the same period secured to him by the 14th section; but it being considered doubtful whether the 2nd section did not bar this right, when the act relied on as taking the case out of the statute was a payment of principal or interest, the 7 Wm. IV. and 1 Vict. c. 28, was passed, reserving to the mortgagee the right of entry, distress, and action for the recovery of the land for twenty years from the last payment of principal or interest, although more than twenty years may have elapsed since the right first accrued.

Arrears of dower, or damages for such arrears, are not to be recoverable by any action or suit beyond six years before the commencement of the action or suit. Before the act, there was no limitation either at law or in equity to a claim for arrears of dower during the life of the heir (sect 41).

Since the 31st day of December, 1833, no arrears of rent or of interest in respect of any money charged in any manner on land or rent, or any damages in respect of such arrear of rent or interest, can be recovered by any distress, action, or suit, but within six years next after the same respectively became due, or next after an acknowledgment in writing given to the person entitled thereto or his agent, signed by the person by whom the same was payable, or his agent; except where there has been a prior mortgagee or other incumbrancer in possession within one year next before an action or suit is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, in which case the arrears of interest may be recovered for the whole time during which such prior mortgagee or incumbrancer was in pos-

session, though it exceed the term of six years (sect. 42). It had already been established in equity, by analogy to the rule at law, that an account of rents and profits could not go back beyond six years before the filing of the bill, and in many cases where a party had neglected his rights, and where there was no disability on the one side, or fraud on the other, the court has refused to carry the account farther back than the filing of the bill. (1 Ball and B., 130.) This discretionary jurisdiction seems to be within the saving of the 27th clause of the act. It seems that the above section refers to rents charged upon land only, to which it had been held that the former statutes did not apply, and not to conventional rents (2 Bing., N. C., 688), the limitations as to which are provided for by the 21 Jac. c. 16, s. 3, and the 3 and 4 Wm. IV. c. 42, s. 3.

This clause contains no exception in favour of persons under disabilities.

Limitations as to tithes and other ecclesiastical property are now regulated by 2 and 3 Wm. IV., c. 100; and 3 and 4 Wm. IV., c. 27.

As to limitations as to advowsons, the 3 and 4 Wm. IV. c. 27, s. 30, enacts that from the 31st day of December. 1833, no *Quare Impedit* or other action, nor any suit to enforce a right of presentation to any church, vicarage, or other ecclesiastical benefice, is to be brought after the expiration of the period during which three clerks in succession shall have held the same, all of whom obtained possession adversely to the right of the person claiming, or of the person through whom he claims, if the times of such incumbencies together shall amount to sixty years, and if not, then after such further period as with the times of such incumbencies shall make up the period of sixty years.

Limitations as to other incorporeal rights are now mainly regulated by 2 and 3 Wm. IV., c. 71. [PRESCRIPTION.]

II. As to Limitations of Personal Actions and Suits relating to Personal Property.

1. Of actions of assault and battery.

By the 21 Jac. I. c. 16, s. 3, all actions of trespass, of assault, battery, wounding, imprisonment, or any of them, must be

commenced and sued within four years after the cause of action arises.

2. Of actions of slander.

By the 21 Jac. I. c. 16, s. 3, all actions on the case for words must be commenced and sued within two years next after the words spoken.

3. Of actions arising upon simple contract, and actions founded in wrong.

By the 21 Jac. I. c. 16, s. 3, all actions of trespass *quare clausum fregit*, actions of trespass, detinue, trover, and replevin for taking away goods and cattle, actions of account and upon the case (except merchants' accounts), actions of debt grounded upon lending or contract without specialty, and actions of debt for arrearages of rent, must be commenced and sued within six years next after the cause of action arises.

Formerly there was no limitation applicable to a suit for a legacy, though in some cases presumption of payment was admitted; but the 3 and 4 Wm. IV. c. 27, s. 40, which fixes the period of limitation to twenty years, is applicable to all legacies, whether charged on real estate or not. Before the statute of the 3 and 4 Wm. IV. c. 42, there was no remedy for injuries done to the real estate of a person deceased, in his lifetime, nor against the estate of a person deceased, in respect of wrongs done by him in his lifetime to the property of another; but now, by sect. 2, executors may bring an action of trespass, or trespass on the case, for an injury done to the real estate of a deceased person in his lifetime, and for which he might have maintained an action at any time within a year after the death of such person; and any such action may be brought against the executors or administrators of a person deceased, for an injury done by him in his lifetime to the real or personal property of the plaintiff, within six calendar months after they shall have taken upon themselves the administration of the deceased's estate, provided in each case that the injury was committed within six months of the death of such person.

The limitation as to arrears of rent in the statute of James does not apply to rents reserved by indenture.

To settle questions which arose upon the effect of subsequent promises and

acknowledgments, it was enacted by 9 Geo. IV. c. 14, s. 1, reciting the act of James, that in actions of debt, or upon the case, grounded on any simple contract, no acknowledgment should be deemed sufficient, unless it were in writing, signed by the party chargeable thereby; and that where there were two or more joint contractors, or executors, or administrators of any contractor, the written promise of one or more of them should not bind the others. But it was expressly provided that nothing in the act contained should alter, take away, or lessen the effect of any payment of principal or interest by any person whatsoever; so that it would seem that this species of acknowledgment will, according to the old doctrine (2 Saund., 63, j. n. (t)), be effectual, not against the party making it only, but his co-contractor. Also (by sect. 6) no indorsement or memorandum of payment upon a promissory note, bill of exchange, or other writing made by or on behalf of the party to whom payment should be made, should be deemed proof of such payment to take the case out of the statute; and (sect. 4) that the act of James and that act should apply to simple contract debts alleged on the part of a defendant by way of set-off.

4. As to actions arising upon specialty.

Before the 3 and 4 Wm. IV. c. 42, there was no statutable limitation to actions upon specialties, though the courts held that payment was *primâ facie* to be presumed after twenty years.

By the 3rd section of the above act actions of debt for rent upon an indenture of demise, actions of covenant or debt upon bond or other specialty, and actions of debt or *scire facias* upon recognizance must be commenced and sued within twenty years after the cause of such actions or suits arises. If the 3 and 4 Wm. IV. c. 27, s. 42, applies to actions on specialty, it is so far repealed by this act; but the better opinion seems to be that the former act applies to rents which are a charge upon land only, and not to conventional rents, whether reserved by indenture or otherwise. (2 Bing., N. C., 683.)

By sect. 5, it is provided, in accordance with the enactment of 9 Geo. IV. c. 14, as to actions on simple contract, that if

any acknowledgment has been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or his agent, or by part payment, or part satisfaction, on account of any principal or interest then due thereon, the person entitled may bring his action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment, or part payment; and in case of the plaintiff being under any of the disabilities mentioned in the 4th section of the same act, or absence of the defendant beyond seas at the time of such acknowledgment being made, then within twenty years of the removal of such disability, or the return of the defendant from beyond seas.

III. Of Limitations of Actions on Penal Statutes.

By the 31 Eliz. c. 5, s. 5 (which act repeals a previous one, the 7 Hen. VIII., c. 3, upon the same subject), all actions, suits, bills, indictments, or informations for any forfeiture upon any statute penal, whether made before or since the act, whereby the forfeiture is limited to the queen, her heirs, and successors only, must be brought within two years after the commission of the offence; and all actions, suits, bills, indictments, or informations for any forfeiture upon any penal statute, whether made before or since the act (except the statute of tillage), the benefit and suit whereof is limited to the queen, her heirs, and successors, and to any other that shall prosecute in that behalf, must be brought by the person suing within one year after the commission of the offence; and in default of such prosecution, the same may be brought by the queen, her heirs, or successors, at any time within two years after the end of that year; and any action, suit, bill, indictment, or information brought after the time limited is to be void. It is provided that where a shorter time is limited by any penal statute, the prosecution must be within the time so limited.

A prosecution by the party grieved was not within the restraint of the statute; but now, by the 3 and 4 Wm. IV. c. 42, s. 3, all actions for penalties, damages, or sums of money given to the party grieved

by any statute now or hereafter to be in force must be brought within two years after the cause of such actions or suits. It is provided that nothing in that section should extend to actions the time for bringing which is especially limited by any statute. The saving in that act in the case of the disability of the plaintiff and the absence of the defendant beyond seas, and also the limitation as to further proceedings after judgment or outlawry reversed, apply to actions by the party grieved.

By the 24 Geo. II. c. 44, s. 1, actions against justices of the peace and constables or others acting in obedience to their warrants are limited to six calendar months.

There is no time limited by any statute for indictments for felonies and other misdemeanours when there is no forfeiture to the queen or to the prosecutor, but the acts of general pardon which have been passed from time to time have the effect of limitations. The last of such acts was the 20 Geo. II. c. 52.

IV. Of the exceptions to the operation of the Statutes of Limitation.

The exceptions in the several statutes of limitation may be stated generally to comprehend infants and other persons under disabilities.

In cases of express trust, the statutes of limitation have no application as between trustee and *cestuy que trust*; and in cases of fraud they operate only from the time of the discovery of the fraud. If a debtor creates by his will a trust of real or personal estate for the payment of his debts, such a trust will prevent the statutes from operating upon a debt not barred at the time of the creation of the trust, that is, from the death of the testator.

In general, in personal actions the Statutes of Limitation do not run against the estate of a person who has died intestate, in respect of claims accrued after his death, until the appointment of an administrator, though the rule is altered by 3 & 4 Wm. IV., c. 27, s. 6, as to rights to chattel interests in land, and apparently also as to money charges on land, besides arrears of dower and arrears of rent or interest of money charged on land. And if there be no personal repre-

sentative against whom actions may be brought, the rights of claimants against the deceased's estate are unaffected by the statutes, as no laches can be attributed to them until an administrator is appointed. (5 B. and Ald., 204.)

A charity is never considered in equity as absolutely barred by the statutes, or by any rule of limitation analogous to them; but the court takes notice of a long adverse possession in considering the effect and construction of instruments under which claims are set up on its behalf. (2 J. and W., 321.)

By the 3 and 4 William IV. c. 27, s. 43, persons claiming tithes, legacies, or any other property for the recovery of which an action or suit at law or in equity might have been brought, cannot bring a suit or other proceeding in any spiritual court for the same but within the period during which they might have brought their action at law or suit in equity. Also, by the 27 Geo. III. c. 44, s. 1, suits in the Ecclesiastical Court for defamatory words must be commenced within six calendar months, and (sect. 2) suits for fornication, incontinence, or for striking or brawling in a church or churchyard, must be brought within eight calendar months after the commission of the offence. But, except in these cases, it does not appear that the Statutes of Limitation have any application to suits in the Ecclesiastical or Admiralty Courts.

The Statutes of Limitation must in general be pleaded positively by the defendant in any action at law, who wishes to take advantage of them, and it has been held in equity that unless the defendant claims the benefit of the statutes by plea or answer, he cannot insist upon them in bar of the plaintiff's demand. (Mitf., 277.)

(Bacon, *Ab.*, art. 'Limitation'; Chitty's *Statutes*; and *Report of Real Property Commissioners*.)

STERLING, a word applied to all lawful money of Great Britain. In Ruding's work on 'Coinage,' vol. i., p. 13, 4to. edit., the various supposed derivations of the word are given, with a list of the old writers who have adopted each. Ruding himself, after an elaborate examination, says, "its origin and derivation are still

unsettled;" but he inclines, with the majority of the authorities, to attribute it to an abbreviation of Esterlings, people of the north-east of Europe, some of whom were employed in the twelfth century in regulating the coinage of England. The word was not in use before the Conquest, though some have given it a Saxon derivation. In the twelfth century its use was common, and in the following century a writer ascribes its origin to the Esterlings. From the twelfth century English money was designated all over Europe as sterling. By the statute called the Assize of Weights and Measures, which is attributed, in some copies, to the reign of Henry III. (1216-1272), in others to that of Edward I. (1272-1307), "the king's measure was made so that an English penny, which is called the sterling, shall weigh thirty-two grains of wheat dry in the midst of the ear." This is the origin of the pennyweight, though it now weighs twenty-four grains.

**STEWARDS, LORD HIGH, OF ENGLAND**, one of the ancient great officers of state. Under the Norman kings and the early kings of the Plantagenet line it seems to have been an hereditary office. Hugh Grentmesnell held the office in the reign of Henry II., and it passed with his daughter and co-heir in marriage to Robert de Bellomont, who was earl of Leicester. Robert's son held it, on whose death without issue it passed to the husband of his sister, the elder Simon de Montfort, who had also the dignity of earl of Leicester. From him it passed to his son, the second Simon de Montfort, who was slain at the battle of Evesham in 1265. This high dignity then reverted to the crown, but was immediately granted to Edmund, king Henry the Third's younger son, together with Montfort's earldom of Leicester, in whose descendants, the earls of Lancaster and Leicester, it continued, and in the person of Henry the Fourth, who was duke of Lancaster, was absorbed into the regal dignity.

From this time no person has been invested with this high dignity as an heritable possession, or even for his own life, or during good behaviour. It is only conferred for some special occasion, and

the office ceases when the business which required it is ended; and this occasion has usually been when a person was to be tried before the House of Peers. On this occasion there is a lord high steward created, who presides, and when the proceedings are closed, breaks his wand, and dissolves the court; but if the trial take place during the session of parliament, though a lord steward is appointed, it is not considered as his court, for he has no judicial functions and only votes with the rest as a peer, although he presides.

**STOCK BROKER.** [**BROKER.**]

**STOCKS.** [**NATIONAL DEBT.**]

**STOPPAGE IN TRANSITU** is the seizure by the seller of goods sold on credit during the course of their passage (transitus) to the buyer. This principle is said to have been established about 1690 in the Court of Chancery (2 Vern., 203); and it has since been acknowledged in the courts of common law. The transitus is defined to be the passage of the goods to the place agreed upon by the buyer and seller or the place at which they are to come into the possession of the buyer. This definition does not mean that the term transitus implies continual motion: goods are in transitu while they are at rest, if they are still on the road to the place to which they have been sent. This doctrine of stoppage in transitu entitles a seller, in case of the insolvency or bankruptcy of the buyer, to stop the goods before they come into the buyer's possession. The right of stoppage in transitu is not confined to cases of buying and selling. A factor either at home or abroad, if he consigns goods to his principal by the order of the principal and has got the goods in his own name or on his own credit, has the same right of stoppage in transitu as if he were the seller of the goods. Questions of stoppage in transitu sometimes involve difficult points of law. The right of stoppage implies that the goods are in the possession of the seller or factor when he exercises this right. Accordingly the law of Stoppage involves the law of Possession of moveable things. The following references will supply all the necessary information on this subject. (Abbot, *On*



*Shipping; Cross, On Lien and Stoppage in Transitu; Smith's Leading Cases, note to Lickbarrow v. Mason; Russell's Treatise on the Laws Relating to Factors and Brokers.*)

SUBINFEDUATION. [FEUDAL SYSTEM.]

SUBORNATION OF PERJURY. [PERJURY.]

SUBPCENA. [EVIDENCE.]

SUBSIDY, from *subsidium*, a Latin word signifying aid or assistance. "Subsidies," says Lord Coke, "were antiently called auxilia, aides granted by act of parliament upon need and necessity; as also for that originally and principally they were granted for the defence of the realm and the safe keeping of the seas." &c. [AIDS.] The word used in its general sense was applied to aids of every description; these were of two kinds, one perpetual, the other temporary. Those which were perpetual were the antient or grand customs, the new or petty customs, and the custom on broad-cloth. The temporary included tonnage and poundage; a rate of four shillings in the pound on lands, and two shillings and eight pence on goods; and the fifteenths or tenths, &c., of moveable goods. The limited sense, which is also the more common sense, of the word subsidy, attaches only to the rate on lands and goods. The grand customs were duties payable on the exportation of wool, sheepskins, and leather. The petty customs were paid by merchant strangers only, and consisted of one-half over and above the grand customs payable by native merchants.

Tonnage and poundage was a duty varying in amount at different times from one shilling and sixpence to three shillings upon every tun of wine, and from sixpence to a shilling upon every pound of merchandise coming into the kingdom. The object in granting it was said to be, that the king might have money ready in case of a sudden occasion demanding it for the defence of the realm or the guarding of the sea. This kind of subsidy appears to have had a parliamentary origin. The earliest statute mentioned by Lord Coke as having granted it is 47 Ed. III. In the early instances it was granted for

limited periods, and express provision was made that it should have intermission, and vary, lest the king should claim it as his duties. The duties of tonnage and poundage were granted to Henry V. for his life with a proviso that it should not be drawn into a precedent for the future. However, notwithstanding the proviso, it was never afterwards granted to any king for a less period. These duties were farmed while Lord Coke was commissioner of the treasury, for 160,000*l.* a year. In the course of the argument in the case of ship-money in 13 Charles I., the king's duties are said to amount to 300,000*l.* This probably was the aggregate of the customs and tonnage and prisage.

Subsidy in its more usual and limited sense consisted of a rate of 4*s.* in the pound on the lands, and 2*s.* 8*d.* on goods, and double upon the goods of aliens. The taxes called tenths, fifteenths, were the tenth or fifteenth part of the value or moveable goods. Other portions, such as the fifth, eighth, eleventh part, were sometimes, but rarely, also levied. These taxes seem to have had a parliamentary origin. There are no appearances of the king ever having attempted to collect them as of right. Henry III. received a fifteenth in return for granting Magna Charta and the Charta de Foresta. In the earlier periods never more than one subsidy and two fifteenths were granted. About the time of the expectation of the Armada (31 Eliz.), a double subsidy and four fifteenths were granted. The then chancellor of the exchequer, Sir Walter Mildmay, when moving for it, said, "his heart did quake to move it, not knowing the inconvenience that should grow upon it." The inconvenience did grow very fast, for treble and quadruple subsidies and six fifteenths were granted in the same reign. These grants seem to have been at intervals of about four years at that period. Subsidies and fifteenths were originally assessed upon each individual, but subsequently to the 8 Edward III., when a taxation was made upon all the towns, cities, and boroughs, by commissioners, the fifteenth became a sum certain, being the fifteenth part of their then existing value. After the fifteenth

was granted by parliament, the inhabitants rated themselves. The subsidy, never having been thus fixed, continued uncertain, and was levied upon each person in respect of his lands and goods. But it appears that a person paid only in the county in which he lived, even though he possessed property in other counties. And, as Hume observes, probably where a man's property increased he paid no more, though where it was diminished he paid less. It is certain that the subsidy continually decreased in amount. In the eighth year of the reign of Elizabeth it amounted to 120,000*l.*, in the fortieth to 78,000*l.* only. Lord Coke estimates a subsidy (probably in the reign of James I. or Charles I.) at 70,000*l.*: the subsidy raised by the clergy, which was distinct from that of the laity, at 20,000*l.*; a fifteenth at about 29,000*l.* Eventually the subsidy was abolished, and a land tax substituted for it.

(2 *Inst.*; 4 *Inst.*; 'Bate's Case,' &c., 2 *State Trials*, 371, ed. 1809; 'The Case of Ship Money,' 3 *State Trials*, 826, ed. 1809; Venn's *Abt.*, tit. 'Prerogative;' Comyn's *Dig.*, tit. 'Parliament,' 'Prerogative.') [CUSTOMS.]

**SUCCESSION.** This is a legal term derived from the Roman "Successio," which signifies a coming into the place of another, and Successor is he who comes into such place.

The Roman term signifies a coming into the place of another so as to have the same rights and obligations with respect to property which that other had. There might be successio either by coming into the place of a person living, or by becoming the successor of one who was dead. Gaius (iii. 77, &c.) gives instances of successio in the case of persons living, one instance of which is the Bonorum Cessio according to the Lex Julia. Succession was again either Universal or Singular. The instances of universal succession (per universitatem) which Gaius (ii. 97) enumerates, are the being made a person's heres, getting the possessio of the bona of another, buying all a man's property, adopting a person by adrogation, and admitting a woman into the manus as a wife; in all which cases all the property of the several persons enumerated passed at

once to the person who was made heres, or got the bonorum possessio, or bought the whole property, or adopted another by adrogation, or married the woman. An instance of singular succession is the taking of a legacy under a man's will.

The term Succession is used in our language. We speak of the succession to the crown or the regal dignity, and the term implies that the successor in all things represents the predecessor. Indeed, the king, as a political person, never dies, and upon the natural death of a king the heir immediately succeeds. The English heir at law takes the descendible lands of his ancestor as universal successor; and the executor takes the chattels real and other personal property of his testator as universal successor. The general assignee or assignees of a bankrupt or insolvent take by universal succession.

Blackstone says that "corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue for ever." It is true that when members of a corporate body die others are appointed to fill up their places, but they do not succeed to the others in the Roman sense of succession—they simply become members of the corporation. But it has been established in some cases [*CORPORATIONS*, p. 679] that the use of the word "successors" implies that the legislature meant to establish a corporation; and yet it is certain that a feoffment of land to a corporation aggregate without the word "successors" is a valid grant. In a feoffment to a corporation sole the word "successors" is necessary. The succession in the case of a corporation sole follows the nature of the Roman succession. In the case of a corporation aggregate there is no succession, and the rule that a corporation may be established by the use of the word "successors" in a statute is founded on an erroneous understanding of the term "successors."

**SUFFRAGAN.** [*BISHOP.*]

**SUICIDE** is the death of a person caused by his own act, voluntary or involuntary.

A rescript of Hadrian expressly directed that those soldiers who, either from impatience of pain, from disgust of

life, from disease, from madness, from dread of infamy or disgrace, had wounded themselves or otherwise attempted to put a period to their existence, should only be punished with ignominia (*Dig.*, 49, tit. 16, s. 6, 'De Re Militari'); but the attempt of a soldier at self-destruction on other grounds was a capital offence. Persons who, being under prosecution for heinous offences, or being taken in the commission of a great crime, put an end to their existence from fear of punishment, forfeited all their property to the Fiscus, if the offence was such as would have been followed by confiscation if they had been convicted. (*Dig.*, 48, tit. 21, s. 3.) Suicide was not uncommon among the Romans in the later republican period; and it became very common under the emperors, as we see from the examples in Tacitus and in the younger Pliny, who mentions the case of Corellius Rufus (*Ep.*, i. 12), Silius Italicus (iii. 7), Arria (iii. 16), and the woman (vi. 24) who succeeded in persuading her husband, who was labouring under an incurable disease, to throw himself, tied to her, into a lake. Except in the cases mentioned in the two titles of the 'Digest' above cited, suicide was not forbidden by the Roman law; nor was it discountenanced by public opinion. (Rein, *Das Römische Criminalrecht*, p. 883.)

Voluntary suicide, by the law of England, is a crime; and every suicide is presumed to be voluntary until the contrary is made apparent. This crime is called self-murder and feloniam de se (self-felony), neither of which terms is calculated to convey a correct notion of the legal character of this offence, or of the mode in which it is punished.

A *felo de se* (self-felon) is a person who, being of years of discretion and in his senses, destroys his own life, either intending to do so, or intending to do some other act of a character both unlawful and malicious; as if, in attempting to kill another, under circumstances which would have rendered such killing either murder or manslaughter, a gun bursts in the assailant's own hand, or he runs upon a knife *casually* in the hand of the person whom he intended to kill. But in no case is self-felony considered to be com-

mitted if death do not ensue within a year and a day of the blow or injury; or, in other words, if a whole year intervene between the day on which the blow, &c., is given, and the day on which death takes place.

The legal effect of a self-felony is a forfeiture to the crown of all the personal property which the party had at the time when he committed the act by which the death was caused, including debts due to him; but though the crime is called felony, it was never attended with forfeiture of freehold, and never worked any corruption of blood. It appears, however, that formerly the crown was entitled to the year, day, and waste of the freehold lands of a self-felon. The fact that a self-felony has been committed is ascertained by an inquest taken before the coroner or other officer who has authority to hold inquests, upon view of the dead body. [CORONER.]

When a self-felony is found by the inquisition, the jury ought also to inquire and find whether the party had any, and, if any, what goods and chattels at the time when the felony was committed.

The crown takes the property of the self-felon subject to no liability in respect of his debts or engagements. Upon a memorial presented to the treasury by a creditor of the deceased, a warrant under the sign-manual is generally obtained, which authorises the ecclesiastical court to grant letters of administration to such creditor, who, upon such grant being made, acquires the ordinary rights, and becomes subject to the ordinary liabilities of a personal representative.

Involuntary suicide is death occasioned by the act of the party, either without an actual intention of destroying life or of committing any other wilful malicious act, or without the legal capacity of intending to do so. Neither self-felony nor any other crime can be committed by a child who has not attained years of discretion; nor can it be committed by a person who, by disease or otherwise, has lost, or has been prevented from acquiring, the faculty of discerning right from wrong.

At common law, which in this respect follows the canon law, a person found by

inquest to be *felo de se* is considered as having died in mortal sin; and his remains were formerly interred in the public highway without the rites of Christian burial, and a stake was driven through the body: but by the 4 Geo. IV. c. 52, the coroner or other officer by whom the inquest is held is required to give directions for the private interment of the remains of any person against whom a finding of *felo de se* shall be had, without any stake being driven through the body, in the churchyard or other burial-ground of the parish in which the remains of such person might by the laws or customs of England be interred, if the verdict of *felo de se* had not been found; such interment to be made within twenty-four hours from the finding of the inquisition, and to take place within the hours of nine and twelve at night, without performance of any of the rites of Christian burial.

The Code Pénal of France contains no legislation on the subject of suicide. Of the modern codes of Germany, some contain no provisions, and others vary in their particular provisions. In the Bavarian and Saxon codes suicide is not mentioned. The Prussian code forbids all mutilation of the dead body of a self-murderer under ordinary circumstances; but declares that it shall be buried without any marks of respect otherwise suitable to the rank of the deceased; and it directs that if any sentence has been pronounced, it shall, as far as it is feasible, be executed, due regard being had to decency and propriety, on the dead body. The body of a criminal who commits self-murder to escape the execution of a sentence pronounced against him is to be buried at night by the common executioner, at the usual place of execution for criminals. The Austrian code simply provides that the body of a self-murderer shall be buried by the officers of justice, but not in a churchyard or other place of common interment.

SUIT is a legal term used in different senses. The word *secta*, which is the Latin form, is from "*sequor*," to follow; and hence the general meaning of the word may be deduced.

1. A suit in the sense of litigation, is a

proceeding by which any legal or equitable right is pursued, or sought to be enforced in a court of justice. Where the remedy is sought in a court of Law, the term Suit is synonymous with Action; but when the proceeding is in a court of equity the term Suit is alone used. The term is also applied to proceedings in the ecclesiastical and admiralty courts.

2. Suit of court, in the sense of an obligation to follow, that is, to attend, and to assist in constituting, a court, is either real or personal.

Suit-real, or rather suit-regal, is the obligation under which all the residents within a leet or town are bound, in respect of their allegiance as subjects, to attend the king's criminal court for the district, whether held before the king's officer and called the sheriff's tourn, or held before the grantees of leets or the officers of such grantees, and called courts-leet. [LEET.]

Suit-personal is an obligation to attend the civil courts of the lord under whom the suitor holds lands or tenements; and this is either suit-service or suit-custom. If freehold lands, &c. be held of the king immediately, or, as it is feudally termed, in chief, suit-service is performed by attendance at the county court, the court held by the king's officer, the sheriff, unless the lands, &c., constituted an entire barony, in which case the suit demandable from the tenant was, his attendance as a lord of parliament. If freehold lands, &c., are held mediately only of the king, but immediately (or in chief) of an inferior lord, the suit demandable is attendance at the court baron of the lord: in either case suit-service is expressly or impliedly reserved upon the creation of the tenure, as part of the services to be rendered for the estate. In manors [MANORS] where there are copyhold, that is, customary estates, the custom of the manor imposes upon the copyholder an obligation to attend the lord's customary court; but as this obligation is not annexed by tenure to the land held by the copyholder, but is annexed by custom to his position as tenant, the suit is not suit-service but suit-custom. In the case of freeholders attending as suitors the county court or the court-baron (as in the case of

the antient tenants per baroniam attending parliament), the suitors are the judges of the court, both for law and for fact, and the sheriff or the under-sheriff in the county court, and the lord or his steward in the court-baron, are only presiding officers with no judicial authority. But in the criminal jurisdiction of the tourn and leet, the sheriff and the grantee of the leet, or his steward, are the judges; and the suitors act only a subordinate part.

In the customary court, though its functions are confined to matters of a civil nature, yet, on account of the original baseness of the copyhold tenure, the judicial power is wholly in the lord or his steward.

3. Besides suit of court, *secta ad curiam*, there are other species of personal suit, which, like suit of court, are divisible into suit-service and suit-custom. Of these the most usual is suit of mill, *secta ad molendinum*, which is where, by tenure or by custom, the freehold or customary tenant is bound to grind his corn at the lord's mill.

SUIT AND SERVICE. [SUIT.]

SUMMARY CONVICTIONS. [LAW, CRIMINAL.]

SUPERANNUATIONS. [PENSION.]

SUPERCARGO. [SHIPS.]

SUPERSEDEAS, in law, the name of a writ used for the purpose of superseding proceedings in an action (*Tidd's Practice*; *Archbold's Practice*): in bankruptcy it is the writ used for the purpose of superseding the fiat. It is obtained on application by petition to the court of bankruptcy, and is granted on the ground that the fiat is invalid in point of law, has not been duly prosecuted, &c. [BANKRUPTCY.] (*Deacon's Law of Bankruptcy*; *Eden's Bankruptcy Law*.)

Supersedeas also in its more general sense is used to express that which supersedes legal proceedings, although no writ of supersedeas may have been used for that purpose. Thus if a writ of certiorari be delivered to an inferior court for the purpose of removing a record to a superior court, the writ of certiorari is said to be a supersedeas of the proceedings before the inferior court.

SUPPLY. [PARLIAMENT.]

SUPREMACY is a term used to de-

signate supreme ecclesiastical authority; and is either papal or regal. Papal supremacy is the authority exercised until nearly the middle of the sixteenth century by the pope over the churches of England, Scotland, and Ireland, as branches and integral parts of the Western or Latin church, and which continues to be exercised to some degree over that portion of the inhabitants of those countries who are in communion with the Church of Rome. The extent of the legislative authority of the pope was never exactly defined.

The papal supremacy was abolished by the legislatures of the three kingdoms in the sixteenth century. In order to ensure acquiescence in that abolition, particularly on the part of persons holding offices in England and Ireland, an oath has been required to be taken, which is generally called the oath of supremacy, a designation calculated to mislead, it being in fact an oath of *non-supremacy*; since, though in its second branch it negatives the supremacy of the pope, it is silent as to any supremacy in the king. This oath is therefore taken without scruple by persons who are not Roman Catholics, whether members of the Anglican church or not. The form of the oath was established in England by 1 Wm. & Mary, c. 8; it is as follows:—"I, A. B., do swear that I do from my heart abhor, detest, and abjure, as impious and heretical, that damnable doctrine and position, that princes excommunicated or deprived by the pope, or any authority or the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare that no foreign prince, person, prelate, state, or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence, or authority, ecclesiastical or spiritual, within this realm. So help me God." Under this and many former statutes, all subjects were bound to take the oath of supremacy when tendered; but by the 31 Geo. III. c. 32. s. 18, no person, since the 24th June, 1791, is liable to be summoned to take the oath of supremacy, or prosecuted for not obeying such summons; and Roman Catholics, upon taking the oath introduced by that Act.

s. 1, in which the *civil* and *temporal* authority of the pope are abjured, may hold office without taking the oath of supremacy. As to other cases concerning the oath of supremacy see *LAW, CRIMINAL*, p. 218.

Henry VIII. was acknowledged as supreme head of the church by the clergy in 1528. This supremacy was confirmed by parliament in 1534, when, by the statute of 26 Hen. VIII. c. 1, it was enacted "that the king our sovereign lord, his heirs, and successors, kings of this realm, shall be taken, accepted, and reputed the only supreme head in earth of the Church of England, and shall have and enjoy, annexed to the imperial crown of this realm, as well the style and title thereof, as all honours, dignities, pre-eminences, jurisdictions, privileges, authorities, immunities, profits, and commodities to the said dignity of supreme head of the same church belonging and appertaining; and shall have power from time to time to visit, repress, redress, reform, order, correct, restrain, and amend all such errors, heresies, abuses, offences, contempts, and enormities, whatsoever they be, which, by any manner of spiritual authority or jurisdiction, may lawfully be reformed, repressed, ordered, redressed, corrected, restrained, or amended, most to the pleasure of Almighty God, the increase of virtue in Christ's religion, and for the conservation of the peace, unity, and tranquillity of this realm; any usage, custom, foreign laws, foreign authority, prescription, or any other thing to the contrary notwithstanding."

**SURETY.** A surety is one who undertakes to be answerable for the acts or omissions of another, who is called his principal. Such undertaking must be in writing, and it may be either by bond or by simple writing. A contract is not binding unless made upon some sufficient consideration; but in the case of a bond this consideration is inferred from the circumstances of deliberation incident to its execution as a deed. When the undertaking is not by bond, it is necessary that the consideration should appear upon the face of the written instrument, or be necessarily implied from the terms of it, and that the instrument should be signed

by the party who becomes the surety. The instrument by which the surety becomes bound, when it has reference to civil matters, is generally called a guarantee, and ordinarily consists of an undertaking to become answerable for the payment of goods furnished to the principal, or for his integrity, skill, attention, and other like matters. In such cases the consideration expressed would probably be the furnishing of the goods to the principal, or his employment by the party guaranteed. In the construction of guarantees the same rule of law prevails as in the case of all written instruments,—that they shall be understood in the sense most favourable to the party making them which the words will reasonably bear.

With respect to the rights of the surety against the principal, Mr. Justice Buller has distinctly laid down the law, "wherever a person gives a security by way of indemnity for another, and pays the money, the law raises an *assumpsit*," that is, implies a promise on the part of the principal to repay to the surety all the money that he has expended on his behalf, and this money may be recovered in an action against the principal for money paid to his use. But in no case is the surety entitled to more than an indemnity from his principal. The court of chancery will interfere to give the surety relief out of any funds of the principal which he cannot reach at common law.

Where more persons than one become sureties for the same principal, they are called co-sureties. If one of these has paid the whole of the debt due from the principal, he may recover in an action of *assumpsit* from his co-sureties the amounts for which they were respectively liable. A court of equity will also interfere to regulate the proportions partly due from each. And in case any of them are unable to pay from insolvency, &c., it will compel the others to contribute proportionally the amount for which the defaulters were liable. The law is the same as to co-sureties, whether all have been created by the same instrument in writing, or each one by a distinct instrument.

(Fell, *On Guarantees*; *Mayhew v. Crickett*, 2 Swanston, 185.)

**SURETY OF THE PEACE** is the acknowledging of a recognizance or bond to the king, taken by a competent judge of record for keeping the peace. [RECOGNIZANCE.] Such recognizance may be obtained by any party from another on application to a magistrate, and stating on oath that he has just cause to fear that such other "will burn his house, or do him a corporal hurt, as by killing or beating him, or that he will procure others to do him such mischief." The fear must be of a present or future danger. Upon the neglect or refusal of the party so summoned to enter into the recognizances demanded, he may be committed to prison by the magistrate for a specified period, unless he sooner complies. Sureties also may be similarly required for the good behaviour of parties who have been guilty of conduct tending to a breach of the peace, abusing those in the administration of justice, &c.

(Burn's *Justice*, tit. 'Surety of the Peace.')

**SURGEONS, COLLEGE OF.** The present College of Surgeons of England, had its origin in the Company of Barber-Surgeons, which was incorporated by royal charter in the first year of Edward IV. By this charter of 1 Edward IV., the barbers practising surgery in London, who had before associated themselves in a company, were legally incorporated as the Company of the Barbers in London. Their authority extended to the right of examining all instruments and remedies employed, and of bringing actions against whoever practised illegally and ignorantly; and none were allowed to practise who had not been previously admitted and judged competent by the masters of the company.

This charter was several times confirmed by succeeding kings, but in spite of it many persons practised surgery independently of the company, and at length associated themselves as members of a separate body, and called themselves the surgeons of London. In the 3rd year of Henry VIII. it was enacted "that no person within the city of London, or within seven miles of the same, should

take upon him to exercise or occupy as a physician or surgeon, except he be first examined, approved, and admitted by the bishop of London or by the dean of St. Paul's for the time being, calling to him four doctors of physic, and for surgery other expert persons in that faculty." All who under this act obtained licence to practise were of course equally qualified, whether members of the company of barbers or not; and in the 32nd year of Henry VIII. the members of the latter company, and those who had incorporated themselves as the company of surgeons, were united in one company, "by the name of masters or governors of the mystery and commonalty of barbers and surgeons of London."

In the 18th year of George II. an act was passed by which the union of the barbers and surgeons was dissolved, and the surgeons were constituted a separate company; and in the 40th year of George III. a charter was granted by which it was confirmed in all the privileges which had been conferred upon it by the act of George II. By this charter the title of the company was altered from that of the inasters, governors, and commonalty of the Art and Science of Surgeons to that of the Royal College of Surgeons in London. Under this charter it was governed by a council or court of assistants, consisting of twenty-one members, of whom ten composed the court of examiners. Of these ten one was annually elected president, or principal master, and two were annually chosen vice-presidents or governors. By the bye-laws which the council were empowered by the charter to make, the members of the council were to be chosen for life from those members of the College whose practice was confined to surgery, and were to be elected by ballot at a meeting of the council. The examiners were generally chosen in order of seniority from the members of the council: the presidents and vice-presidents were chosen in rotation from the court of examiners, the president for the current year having been the senior vice-president during the past year.

A new charter was granted to the College of Surgeons in the 7th year of

Victoria, by which it is declared, that the name of the college shall henceforth be The Royal College of Surgeons of England; and that a portion of the members of the said college shall be fellows thereof, by the name of The Fellows of the Royal College of Surgeons of England. The charter declares that the present president and two vice-presidents and all other the present members of the council of the said college, and also such other persons, not being less than 250 nor more than 300, and being members of the said college, as the council of the college, at any time before the expiration of three calendar months from the date of the charter, shall elect and declare to be fellows in manner by the charter directed; together with any such other persons as the council of the said college, after the expiration of the said three calendar months and within one year from the date of the charter, shall appoint in manner by the charter authorized, shall be fellows of the said college. But no person, except as hereinbefore named, is to become a fellow, unless he shall have attained the age of twenty-five years, and complied with such rules as the council of the college shall think fit, and by a bye-law or bye-laws direct; nor unless he shall have passed a special examination by the examiners of the said college. Every person admitted as a fellow, as last mentioned, is to become a member of the College by such admission, if he is not already a member. Henceforth, no member of the College, who is not a fellow, is to be eligible as a member of the council. There are also (10) some other restrictions as to eligibility. The present members of the council are to continue life members as heretofore; and the number of members of council is to be increased from twenty-one to twenty-four, and all future members are to be elective, and to be elected periodically, in the manner prescribed by the charter (12) when the number of elective members of the council shall be completed and made up to twenty-four. Three members shall go out annually, but they may be re-elected immediately. The members of council are to be elected by the fellows, including the members of the coun-

cil as such, in the manner prescribed by the charter (15); and the election is to be by ballot (17). There are various special provisions as to the eligibility of fellows for which we refer to the charter. There are to be ten examiners of surgeons for the college, and the present examiners are to continue for life; and all future examiners are to be elected by the council, either from the members of the council, or from the other fellows of the college, or from both of them; and all future examiners of the College shall hold their office during the pleasure of the council. The charter contains other regulations, and confirms the powers of the college and the council, except so far as they are altered by the charter; and it declares that no bye-law or ordinance hereafter to be made by the council shall be of any force until the crown shall have signified its approval thereof to the College under the hand of one of the principal secretaries of state, or otherwise as in the charter stated (22). "The Bye-Laws and Ordinances of the Royal College of Surgeons of England" contain the regulations as to the candidates for the fellowship (sect. 1), for the examination of candidates for the fellowship (2), admission of fellows (3), election of members of council (5). By section 1, it is required that every candidate for the fellowship, among other certificates, shall produce a certificate, satisfactory to the court of examiners, that he has attained a competent knowledge of the Greek, Latin, and French languages, and of the elements of mathematics. The subjects of examination for the fellowship are Anatomy and Physiology on the first day, and Pathology and Therapeutics and Surgery on the second day. The examination is to be by written answers to written or printed questions; but any candidate may be interrogated by the examiners, on any matter connected with the questions or answers. In the anatomical examination the candidate must also perform dissections and operations on the dead body in the presence of the examiners.

The members of the College are admitted by diploma after examination before the court of examiners, and their diploma confers upon them the right of



practising surgery in any part of the British dominions.

The council of the College have at various times required certain qualifications of age, education, &c., from candidates for examination. The regulations last issued are dated October, 1841.

The examinations of members are conducted *vivâ voce*, or, if the candidate desire it, in writing. The questions are almost exclusively anatomical and surgical: and the examination of each candidate occupies about an hour and a half, during which time he is usually questioned by four of the examiners in succession.

According to the financial statement (June, 1843), the receipts of the College for the previous year were as follows:—

Court of examiners; fees for diplomas, at 20 guineas each, exclusive of stamps . . . . .	£	s.	d.
Rent . . . . .	14,093	11	0
Incidental, sale of lists, catalogues, &c. . . . .	12	10	0
Dividends on investments in government securities, &c. . . . .	160	6	6
	1,499	0	4
	<hr/>		
	£15,765	7	10

And the disbursements were as follows:—

College department, including council, court of examiners, auditors, diploma-stamps, salaries, &c. . . . .	7,402	19	1
Museum department, including catalogues, specimens, spirit, salaries, studentships, &c. . . . .	3,653	0	10
Library department, including the purchase and binding of books, salaries, &c. . . . .	1,120	12	7
Miscellaneous expenses, taxes, rent, &c. . . . .	698	18	1
Repairs and alterations . . . . .	253	10	6
Hunterian oration, lectures, Jacksonian prize, &c. . . . .	264	4	0
	<hr/>		
	£13,393	5	1

The museum of the College consists of

the collection made by John Hunter, which was given in trust by government, who purchased it for 15,000*l.*, and of numerous additions made to it by donations of members and others, and by purchase. The parts of it which illustrate physiology, palæontology, and morbid anatomy are probably the most valuable collections of the kind in Europe.

Lectures on anatomy, for which 510*l.* were left to the company of barber surgeons by Edward Arris, and 16*l.* per annum by John Gale, are delivered annually by one of the members of the council or some other member selected by them. Twenty-four museum lectures are also, in compliance with the deed of trust, annually delivered by the Hunterian professor, the subjects of which must be illustrated by preparations from the Hunterian collection, and from the other contents of the museum. An oration in commemoration of John Hunter, or of others who have been distinguished in medical science, is delivered annually on the 14th of February, the anniversary of Hunter's birth.

Abstracts of the several acts and charters relating to the College of Surgeons may be found in Willecock 'On the Laws relating to the Medical Profession,' London, 1830, 8vo., and in Paris and Fonblanque's 'Medical Jurisprudence,' vol. iii. The bye-laws, the list of members, the catalogues of the museum and library, &c., are published by the college. The dissection of human bodies is now regulated by 2 & 3 Wm. IV. c. 75 [ANATOMY ACT].

**SURRENDER.** "*Sursum redditio* properly is a yielding up of an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them." (Co. Litt., 337 b.) A surrender and a release both have the effect of uniting the particular estates with that in reversion or remainder; but they differ in this, that whereas a release generally operates by the greater estate descending on the less, a surrender is the falling of the less estate into the greater. [As to the difference between SURRENDER and RESIGNATION, see RESIGNATION.]

Coke mentions three kinds of surrender: 1. A surrender at common law, which is the surrender properly so called; 2. A surrender by custom of copyhold lands or customary estates; and, 3. A surrender improperly taken, as of a deed, a patent, of a rent newly created, and of a fee-simple to the king. (Co. Litt. 338 a.)

As to surrender of copyholds, see **COPYHOLD**.

A surrender may be made of letters-patent and offices to the king, to the intent that he may make a fresh grant of the same right; and a grant of the second patent for years to the same person, for the same thing, causes a surrender in law of the first. (10 *Rep.*, 66.)

**SURROGATE** is, according to Cowell's 'Interpreter,' "one that is substituted or appointed in the room of another, most commonly of a bishop or a bishop's chancellor."

The qualifications required in persons appointed as surrogates are defined and enforced by the canons of 1603. The person who undertakes the office without being qualified is subject to certain penalties. (Gibs., *Cod.*, tit. xliiii., c. 3.)

The principal duty of ecclesiastical surrogates consists in granting probates to wills, letters of administration to the effects of intestates, and marriage licences. The proper performance of these duties is guarded by particular enactments. (92nd of the Canons of 1603 and 93rd Canon; Gibson, *Cod.*, tit. xxiv., c. 4.)

Surrogates are also persons appointed to execute the offices of judges in the courts of Vice Admiralty in the Colonies, in the place of the regular judges of those courts. The acts of such surrogates have, by the 56 Geo. III. c. 82, the same effect and character as the acts of the regular judges.

**SURVIVOR, SURVIVORSHIP.**

[*ESTATE*, p. 858.]

**SUZERAIN.** [*FEUDAL SYSTEM*, p. 22.]

**SWEARING**, a profane use of the name of the Deity. By the 109th Canon, churchwardens are to present those who offend their brethren by swearing, and notorious offenders are not to be admitted to communion until they are reformed.

Profane cursing and swearing were first made an offence punishable by law by 20 Jas. I. c. 21 (continued by 3 Chas. I. c. 4; 16 Chas. I. c. 4; and 6 and 7 Wm. III. c. 11). The 19 Geo. II. c. 21, enacts, that if any person shall profanely curse or swear, and be convicted thereof on confession, or on the oath of one witness, before any magistrate, he shall forfeit, if a day-labourer, common soldier, sailor, or seaman, 1s.; if any other person under the degree of gentleman, 2s.; if of or above the degree of a gentleman, 5s.; for every second conviction double, and for every third and subsequent conviction treble. The penalties are to go to the poor of the parish. Parties who do not pay the penalties and costs may be imprisoned and kept to hard labour ten days for the penalties, and six other days for the costs. Magistrates and constables are liable to penalties if they wilfully omit to do their duty under the act. No person can be prosecuted except within eight days after he has committed the offence. By 22 Geo. II. c. 33, persons belonging to the navy who are guilty of profane oaths or curses are liable to punishment by court-martial.

(Com., *Dig.*, 'Justices of Peace,' b. 23; Buru's *Justice*, 'Swearing.')

## T

**TACK** is the technical term in Scotland for a lease, whether of lands or edifices; the rent is called the tack-duty, and the tenant the tacksman. The Scottish system of leases having lately attracted some attention, and being intrinsically important, a separate sketch of its more prominent peculiarities seems to be requisite. The Scottish lease, however long its duration, is purely a contract, and does not partake—at least in questions between landlord and tenant—of the peculiarities of the feudal system. In early times it is possible to trace something like an inferior system of vassalage in the nature of the agriculturist's tenure. He held not as party to a contract, but by a unilateral conveyance from the landlord, called assedation. In Scotland, however, there was no permanent inter-

ruption of the legitimate system of subfeuing; and thus all descriptions of permanent estates could be constituted in the land by the pure adaptation of the feudal usages. There was no temptation to convert the contract for the limited occupation and use of the land into a means of constituting a semi-proprietary right in it—of supplying with a lessee the place of a sub-vassal; and the system of leases, as one of mere letting and hiring, took its principles from the Roman contract of *locatio conductio*. The right of the lessee or tacksmen was so purely personal that it was ineffectual against a party acquiring the lands by purchase from the lessor; and so early as 1449 a statute was passed, preserving the rights of “the pair people that labouris the ground” against new owners. Leasehold rights, however, in questions of succession, and in the form of attachment, employable by creditors, have by usage come into the position of real or heritable property. In the times of rapid agricultural improvement, when farms were frequently taken on leases of fifty-seven years at a low rent, a virtual estate was created, the succession to which might for the time be more important than that of the ownership of the land. Unless there be any specification to the contrary in the lease, such successions follow the rules applicable to landed property. It has been matter of much regret, that the system by which feudal rights in land may be subjected to real burdens, has not been extended to this species of property, so as to enable valuable leases to be burdened with a security for borrowed money, or a guarantee fund for provisions for children. The system of granting and recording public feudal titles not being available for this species of property, all attempts to accomplish this object, by the tenant assigning the lease and retaining possession as the assignee’s subtenant, have been ineffectual against the rights of creditors. It has been frequently proposed to pass an act creating a system of registration of leases, and of burdens affecting them.

It is unnecessary to state very minutely the title which a person must have to enable him to grant a lease, the parties who may hold leases, or the

nature of the titles which constitute an ordinary lease, as these bear a generic resemblance to the corresponding features of English law. Long leases, however, being the prominent feature of the Scottish system, those cases in which there is a restriction on granting them may be noticed. A person who has a life-rent interest is, in the general case, not entitled to grant a lease to last beyond his own life. Persons having the absolute administration of property, as trustees, corporations, &c., are entitled and bound to grant leases for such a period as is deemed necessary to good husbandry; and this period has, by usage, in the ordinary case, been fixed at nineteen years. There have been many questions as to the extent to which persons holding under entails may grant leases, because in many instances attempts have been made in this form to alienate a considerable estate in the property, which have been challenged by successors. In the celebrated Queensberry case, leases granted for ninety-seven years, on a grassum (that is, a sum of money paid by the tenant on entering, like a fine in England), were found to be struck at by the entail as an attempt to alienate part of the property (2 Dow, 90). In later cases, leases of forty and thirty-one years have been found ineffectual. A lease of twenty-one years is the longest that has been sanctioned by the courts where an heir of entail has shown that he has an interest to impugn the contract.

Writing is necessary to constitute a lease, although possession during the part that may remain over of a year begun, may be held as a right from sufferance and acquiescence in its commencement. The proper form of the written agricultural lease has been an object of much attention by conveyancers, and there is a considerable degree of uniformity in the practice throughout the country. There are usually nineteen clauses, as follow:—1. *The Description of Parties.* 2. *The Destination*, in which the extent to which assigning or subletting is permitted or prohibited is set forth, and provision is made for the arrangements in case of the tenant’s decease. 3. *Clause of Possession*, describing the subject let. 4.

*Duration.* 5. *Reservation*, if there be any rights such as that to minerals or game reserved by the landlord. 6. *Landlord's Meliorations*, containing such obligations to improve the subject as the landlord undertakes. 7. *Warrantice* or guarantee of the title given to the tenant. 8. *Rent-clause*. 9. *Tenant's Meliorations*, setting forth such improvements as the tenant undertakes. 10. *Preservation*, containing the tenant's obligation to keep the building, fences, &c., in repair. 11. *Insurance*, in which the tenant becomes bound to insure the buildings, crops, &c., against fire. 12. *Thirlage*. This clause, a remnant of feudal usages, is now comparatively rare—it binds the tenant to grind his corn at the mill of the over-lord. 13. *Management*. 14. *Bankruptcy*, providing in general for the landlord's resumption of the lease if the tenant become bankrupt. 15. *Removal*, by which the tenant engages to evacuate the premises at the prescribed term. 16. *Reference*, providing for arbitration of disputes. 17. *Mutual Performance*, indicating penalties to be paid by the party failing. 18. *Registration* for execution [REGISTRATION]. 19. *Testing clause*, containing the formalities of the execution of the contract. Of these, the clause of management is the most important. It is now much doubted how far it is good policy to bind the tenant to the observance of a particular course of agriculture. In the highly improved districts, where very scientific farming is expected, the tenant is generally more capable than the landlord of estimating the value of improved systems. Agricultural chemistry, and other means of increasing the produce of the soil, are at present the object of much attention among farmers, and where tenants cannot alter a fixed routine without the risk of a law-suit, an embargo is laid on the practical application of improvements. The landlord's chief interest in any routine being followed, is simply the preservation of the land from deterioration towards the conclusion of the lease. On the subject of the usual provisions for management, Mr. Hunter says, "In those districts where agriculture is best understood, the following are the ordinary rules of management during the

currency of the lease:—1. White corn crops ripening their seeds shall never be taken from the same land in immediate succession. 2. A certain proportion shall be under turnips or plain fallow every year, and be sown to grass with the first corn crop after turnips or fallow. 3. No farm-yard dung or putrescent manure made from the produce of the farm, nor straw nor hay made from the natural herbage shall ever be carried off the farm. It is sometimes added, that no turnips or rape or hay of any kind shall ever be removed or sold. And upon weak soils, it is sometimes required that no less than half of the turnips shall be eaten by sheep on the ground where they grow. 4. If the soil is not such as to admit of being ploughed and cropped every year, it is stipulated that a certain part or proportion shall be always in grass, and that land laid down to grass shall be, before being broken up again, two or more years in pasture. 5. During the first five or six years of a lease, the conditions are sometimes more special, obliging the tenant to have so much more in fallow or turnips every year, and so much more in grass, and also to leave the farm in a particular shape, so as to admit of the incoming tenant pursuing a correct rotation of cropping from his very entry. Or 6. What is approved of by some agriculturists, it may be agreed that the lessee shall cultivate the lands according to the rules of husbandry, but with the addition of specific regulations applicable to the four or five last years of the lease. 7. Adherence to the course prescribed may be enforced by conditioning for payment of additional rent in the event of contravention, besides damages, and with a power to prevent further contravention, for which purpose power to make a summary judicial application is occasionally taken. Or 8. Liberty may be given to the lessee to deviate from the prescribed course upon payment of an additional rent specified, which may be declared to be pactional and not penal, and not liable to judicial modification. 9. In some districts, though seldom in the most improved, there is occasionally a stipulation that the lessee shall himself reside upon and

manage the farm."—i. 369-370. (*A Treatise on the Law of Landlord and Tenant, with an Appendix, containing Forms of Leases*, by Robert Hunter, Esq., Advocate, 2 vols. 8vo., 1845.)

#### TAIL, ESTATE. [ESTATE.]

TAILZIE, in the law of Scotland, is the technical term corresponding with the English word Entail, which now generally supersedes it in colloquial use, even in Scotland. The early history of Entail law in Scotland in some respects resembles that of England but in later times they diverged from each other. In Scotland there was no early effort, such as the statute of Westminster the Second (13 Edw. I.) favouring deeds appointing a fixed series of heirs, nor does there appear to have been on the part of the judges that inclination to permit perpetuities to be defeated by fictions which was shown in England. Devices, however, of a very similar character to those of the English statute were adopted to defeat attempts by holders under entail to use their lands as if they were absolute proprietors. The first and simplest restriction laid on the destined heirs of an entail was in the form of a mere prohibition, against contracting debt which might occasion the attachment of the estate by creditors, selling the property, altering the order of succession, and the like. A provision of this character, called the "Prohibitive clause," was, however, quite insufficient to accomplish the end; because if a creditor had really attached the estate for debt, or a person had *bonâ fide* purchased it, it was no ground for wresting the title out of his hands, that the proprietor was under a prohibition against permitting such occurrences. A second provision was added, called an Irritant clause, by which any right acquired contrary to the provisions of the entail was declared to be null. Still this did not effectually intimidate the holder under the entail from making efforts to break it, and did not give the next in succession a sufficient title to interfere. A third provision was added called the "Resolutive clause," by which the right of the person who contravenes the prohibition "resolves" or becomes forfeited. It was provided by sta-

tute (1685, c. 22) that all entails should be effective which contain Irritant and Resolutive clauses, are duly recorded by warrant of the court of session in Registers of Entails, and are followed by recorded sains containing the Prohibitory, Irritant, and Resolutive clauses. No attempts were made to counteract the Entail system by fictions of law, which are not in accordance with the genius of the law of Scotland, and it became a permanent feature in the institutions of the country. A sort of judicial war has, however, been carried on against Entails individually, which has been productive of a vast amount of litigation and strife, has occupied much judicial time, and has tended to place the titles of property in a precarious and doubtful position. An Entail is excluded from the favourable interpretation of the law. The interpretation of its clauses is to be what is termed *strictissimi juris*. The intention of the framer is never to be contemplated: every blunder is to be given effect to, and nothing is to be explained by reference to the context, if its own meaning as a sentence is doubtful. Thus, in a late case, those who held under an Entail were prohibited among other things from contracting debt to the effect of the estate being attached. The Irritant clause proceeded to say "if the heirs shall contravene the premises, by breaking the Tailzie, contracting of debts," &c. (enumerating other contraventions), it was provided that "then and in any of these cases, the said venditions, alienations, dispositions, infeftments, alterations, infringements, bonds, tacks, obligations, made to the contrair" should be null. It was found that proceedings by creditors to attach the estate for debt were good, because they were not by name enumerated among the things that should be null, though they were prohibited, and mentioned among the things which, if coming to pass should cause a nullity. (*Duffus's Trustees v. Dunbar*, 28th January, 1842, 4 D. B. M. 523.) Some statutory enlargements have been made on the powers of persons holding under entail to provide for widows and younger children: but the system is still productive of great domestic inequality, and it is to be hoped

that in no long time it will be swept away as an impediment to the improvement of the country, and an injustice to the mercantile classes.

TARIFF, a table of duties payable on goods imported into or exported from a country. The principle of a tariff depends upon the commercial policy of the state by which it is framed, and the details are constantly fluctuating with the change of interests and the wants of the community, or in pursuance of commercial treaties with other states. The British tariff underwent six important alterations from 1772 to 1842; namely, in 1787, in 1809, 1819, 1825, 1833, and 1842. The act embodying the tariff of 1833 is the 3 & 4 Wm. IV. c. 56. Its character has been described in the Report of a Committee of the House of Commons in 1840, on the Import Duties, as presenting "neither congruity nor unity of purpose: no general principles seem to have been applied. The tariff often aims at incompatible ends: the duties are sometimes meant to be both productive of revenue and for protective objects, which are frequently inconsistent with each other. Hence they sometimes operate to the complete exclusion of foreign produce, and in so far no revenue can of course be received; and sometimes, when the duty is inordinately high, the amount of revenue becomes in consequence trifling. An attempt is made to protect a great variety of particular interests at the expense of the revenue and of the commercial intercourse with other countries." The schedules to the act 3 & 4 Wm. IV. c. 56, contain a list of 1150 articles, to each of which a specific duty is affixed. The unenumerated articles are admitted at an *ad valorem* duty of 5 and of 20 per cent., the rate having previously been 20 and 50 per cent. In 1838-9, seventeen articles produced 94½ per cent. of the total customs' duties, and the remainder only 5½ per cent., including twenty-nine, which produced 3½ per cent. The following table of the tariff of 1833, showing the duties received in 1838-9, is an analysis of one prepared by the inspector-general of imports for the parliamentary committee to which allusion has been made:—

	No. of Articles.	£
1. Articles producing on an average less than 24 <i>l</i> . }	349	8,050
2. Do. less than 240 <i>l</i> .	132	31,629
3. Do. less than 713 <i>l</i> .	45	32,056
4. Do. less than 2,290 <i>l</i> .	107	244,933
5. Do. less than 22,180 <i>l</i> .	63	1,397,324
6. Do. less than 183,864 <i>l</i> .	10	1,838,630
7. Do. less than 2,063,885	9	18,575,071
8. Articles on which no duty has been received }	147	5,398
		Excess of drawback
		862 22,122,095

Under the head CUSTOMS-DUTIES, mention is made of the tariff of 1842, of the repeal of the duty on wool in 1842, and of the duty on cotton in 1845. In the same year, by an act (8 Vict. c. 7) "to repeal the Duties of Customs due upon the Exportation of certain Goods from the United Kingdom," the duties on the exportation of coals, culm, &c. are wholly repealed.

Caps. 84 to 94 of the 8 & 9 Vict. are all acts relating to Customs, Trade, and Navigation, and they all came into operation on the 4th of August, 1845. Cap. 84 is "An Act to repeal the several Laws relating to Customs," by which 26 acts were repealed. Cap. 85 is "An Act for the Management of Customs," and regulates the appointment and duties of officers, the taking of land for warehouses, &c. Cap. 86 is "An Act for the general Regulation of Customs," and relates to landing, warehousing, and custom-house entries. Cap. 87 is "An Act for the Prevention of Smuggling," and specifies the acts which constitute smuggling, and the penalties. (This Act must be added to those mentioned in SMUGGLING.) Cap. 88 is "An Act for the Encouragement of British Shipping and Navigation," giving, with exceptions which are specified, certain privileges to British ships over foreign ships. Cap. 89 is "An Act for the Registering of British Vessels." Cap. 90 is "An Act for granting Duties of Customs," and imposes duties upon certain articles. (These duties are referred to in the preamble of the Tariff Act (9 & 10 Vict. c. 23) hereafter mentioned.) Cap. 91 is "An Act for the Warehousing of Goods." Cap.

22 is "An Act to grant certain Bounties and Allowances of Customs," which is confined however to refined sugar. Cap. 93 is "An Act to regulate the Trade of British Possessions abroad." Cap. 94 is "An Act for the Regulation of the Trade of the Isle of Man."

On the 26th of June, 1846, the royal assent was given to Sir Robert Peel's last tariff, which carries out still farther the principles of free trade by a total repeal of several important duties, and by a great reduction of numerous others. It is entitled "An Act to alter certain Duties of Customs" (9 & 10 Vict. c. 23.)

On the same day (June 26, 1846) the royal assent was given to the act for repealing the duties on the importation of foreign corn. It is entitled "An Act to amend the laws relating to the Importation of Corn" (9 & 10 Vict. c. 22.) By this act certain reduced "sliding-scale" duties are substituted for those of 1842, and they are to continue till Feb. 1, 1849, when all duties on the importation and entry for home consumption of corn, grain, meal, and flour in the United Kingdom and in the Isle of Man are repealed, with the exception of 1s per quarter on all wheat, barley, bear or bigg, oats, rye, peas, and beans, merely for the purpose of registration of the quantities imported. The duties on all wheat-meal and flour, barley-meal, oat-meal, rye-meal and flour, pea-meal, and bean-meal are to be  $4\frac{1}{2}d.$  for every cwt.

The sliding-scale duties of 1842 (5 & 6 Vict. c. 14) are given under CORN-LAWS, p. 663. The duties of 9 & 10 Vict. c. 22 are as follows:—

	<i>s. d.</i>
Wheat, per quarter, under 48s. . . . .	10 0
48s. and under 49s. . . . .	9 0
49s. and under 50s. . . . .	8 0
50s. and under 51s. . . . .	7 0
51s. and under 52s. . . . .	6 0
52s. and under 53s. . . . .	5 0
53s. and upwards . . . . .	4 0
Barley, bear, or bigg, per quarter, under 26s. . . . .	5 0
26s. and under 27s. . . . .	4 6
27s. and under 28s. . . . .	4 0
28s. and under 29s. . . . .	3 6
29s. and under 30s. . . . .	3 0
30s. and under 31s. . . . .	2 6
31s. and upwards . . . . .	2 0

	<i>s. d.</i>
Oats, per quarter, under 18s. . . . .	4 0
18s. and under 19s. . . . .	3 6
19s. and under 20s. . . . .	3 0
20s. and under 21s. . . . .	2 6
21s. and under 22s. . . . .	2 0
22s. and upwards . . . . .	1 6

On rye, peas, and beans the duty is equal in amount to the duty payable on barley. But there appears to be some blunder here, for the duty on rye, peas, and beans being regulated by the duty on barley, is regulated by the price of barley, and not by the price of rye, peas, and beans. The consequence of this is that when barley is under 26s. the quarter, and is paying 5s. duty, rye, peas, and beans will pay 5s. duty, whatever their respective prices may be; and they will only pay the lowest duty of 2s. per quarter when barley is 31s. and upwards the quarter. (See 'Economist' Newspaper, June 4th and 11th, 1846.) The duties payable on all flour and meal, as above enumerated, until the 1st February, 1849, are enumerated in the schedule to the act. The average price both weekly and aggregate of all British corn is to continue to be made up according to 5 & 6 Vict. c. 14.

Of the exemptions from duty and reductions of duty made by the last tariff act (9 & 10 Vict. c. 23), it will suffice to mention a few of the most important.

No duties are chargeable on the following living animals:—oxen and bulls, cows, calves, horses, mares, geldings, colts, foals, mules, asses, sheep, lambs, swine and hogs, sucking-pigs, goats, kids.

No duties are chargeable on bacon, beef, fresh or slightly salted, beef salted, not being corned beef, meat fresh or salted, not otherwise described, pork fresh or salted (not hams), potatoes, all vegetables not otherwise enumerated or described, hay, hides, and some other articles slightly wrought, and a few wholly manufactured.

Of the reduced duties the following are the most important:—ale and beer of all sorts, 1*l.* the barrel; arrow-root, 2*s.* 6*d.* the cwt., and if from a British possession 6*d.* the cwt.; pearled barley, 1*s.* the cwt., and if from a British possession 6*d.* the cwt.; buckwheat, 1*s.* the quarter; butter 10*s.* the cwt., and if from a British pos-

session 2s. 6d. the cwt.; tallow-candles, 5s., the cwt.; cheese, 5s. the cwt., and if from a British possession 2s. the cwt.; cured fish, 1s. the cwt.; hams of all kinds, 7s. the cwt., and if from a British possession 1s. 6d. the cwt.; men's hats, 2s. each; men's boots, 14s. the dozen pairs; men's shoes, 7s. the dozen pairs; women's boots and shoes, from 4s. 6d. to 7s. 6d. the dozen pairs, according to kinds, as described; maize or Indian corn, 1s. the quarter; potato flour, 1s. the cwt.; rice, 1s. the cwt., and if from a British possession 6d. the cwt.; sago, 1s. the cwt.; tallow, 1s. 6d. the cwt.

The duties on manufactured goods of brass, bronze, china-ware, copper, iron and steel, lead, pewter, tin, woollen, and cotton, are 10*l.* for every 100*l.* value. On silk manufactures the duties are about one-third higher, or 5s., 6s., and 9s. the lb., according to kinds, as described, or 15*l.* on every 100*l.* value.

The duty on foreign spirits of proof strength is 15s. the gallon.

The duty on foreign solid timber, from and after April 5, 1847, is 1*l.* the load of 50 cubic feet; from and after April 5, 1848, the duty is 15s. the load. On deals or boards, the duty, from and after April 5, 1847, is 1*l.* 6s. the load; from and after April 5, 1848, it is 1*l.* the load. The Tariff of 1842 is not altered with respect to timber imported from a British possession, which is still 1s. the load of solid timber, and 2s. the load of sawn timber.

The duties on coffee and tea are not altered by the tariff. The act 8 Viet. c. 5, which fixed the sugar-duties for one year, terminated July 5, 1846, and has been renewed for a month; the subject of those duties is now under the consideration of parliament, and they will probably be altered.

**TAX, TAXATION.** A tax is a portion of the produce of a country or its value, applied to public purposes by the government. Taxation is the general charging and levying of particular taxes upon the community.

In a free state it is assumed that all taxation is necessary for the public good; and it is justified by necessity alone. The amount of expenditure will, in a great measure, be determined by the

magnitude of a state and by the number and importance of its political relations; yet the prudence with which its affairs are administered will affect the demands of the government upon the people nearly as much as its necessities. The expenses of a private person must be regulated by his income; but in a state, the expenditure that is needed is the measure of the public income that must be obtained to meet it. A civilized community requires not only protection from foreign enemies and internal security, but it needs various institutions which are conducive to its welfare. It is the business of a government to provide for these objects in the best manner and at the least expense consistent with their efficiency. Every tax should be viewed as the purchase-money paid for equivalent advantages given in return. This principle assumes the necessity of moderation in levying taxes, and will scarcely be denied by any one when stated in that form; yet it is not uncommon to hear it argued that so long as taxes are *spent in the country*, the amount is not of consequence, as the money is returned through various channels to the people from whom it was derived. The principle we have just laid down exposes the fallacy of this doctrine, by reducing it to a simple question between debtor and creditor. For example, by paying a million of money every year, the people obtain the services of an army. This we will suppose to be an equivalent, and we will further assume that the food and clothing of the force are purchased, and that the entire pay of the men is spent, within the country. The whole of the money will thus be returned: but how? Not as a free gift, not as the repayment of a loan, but in the purchase of articles equal in value to the whole sum. The only benefit obtained by this return of the million is clearly nothing more than the ordinary profits of trade; for the community has already provided the money, and then out of its own capital and industry it produces what is equal to it in value, and this it *sells* to the state, receiving as payment the very sum it had itself contributed as a tax.

No branch of legislation is perhaps so important as the wise application of just principles in the matter of taxation. The



wealth, happiness, and even the morals of the people are dependent upon the financial policy of their government.

Adam Smith lays down four general maxims, which are as follow:—

I. "The subjects of every state ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state."

II. "The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person."

III. "Every tax ought to be levied at the time or in the manner most likely to be convenient for the contributor to pay it."

IV. "Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state."

In discussing the merits of particular taxes we shall have to consider with some minuteness the application of Adam Smith's first maxim. Its justice requires no enforcement or illustration, although the object is most difficult of attainment. The second maxim is of great importance, and the necessity of adhering to it must be universally acknowledged. Uncertainty gives rise to frauds and extortion on the part of the tax-gatherer, and to ill-will and suspicion on that of the contributor, while it offers a most injurious impediment to all the operations of trade. Notwithstanding the many evils of uncertainty, it is by no means an uncommon fault in modern systems of taxation.

Under the constitutional governments of Europe, the people do not indeed suffer from violent exactions, as in the Turkish empire and in Persia; but industry, and commerce are often restrained by irregular and ill-defined taxes. Spain affords many examples of misgovernment, and the injurious character of its taxation is shown in reference to this as well as other principles. To select one instance of uncertainty: "Every landowner is liable to have his property taken in execution for

government taxes, if he is not prepared to pay a half-year or more in advance, according to the difficulties of the Exchequer; consequently he is often compelled to make great sacrifices in order to meet such exigencies." (*Madrid in 1835*, vol. ii. p. 107.)

To levy a tax "at the time and in the manner most likely to be convenient for the contributor to pay it" is always a wise policy on the part of the state. The time or manner of payment may often be more vexatious than the amount of the tax itself, and thus have the evil effects of high taxation, while it produces no revenue to the state. Suppose, for example, that a merchant imports goods and is required to pay a duty upon them immediately and before he has found a market for them:—he must either advance the money himself or borrow it from others, and in either case he will be obliged to charge the purchaser of the goods with the interest; or he must sell the goods at once, not on account of any commercial occasion for the sale, but in order to avoid prepayment of the tax. If he pays the tax and holds the goods, the consumer will have to repay not only the tax but the interest; and if he parts with them at a loss or inconvenience, trade is injured, and the general wealth and consequent productiveness of taxation proportionately diminished. To prevent these evils the Bonding or Warehousing system was established in this country, which affords the most liberal convenience to the merchant and a general facility to trade. Certain warehouses are appointed under the charge of officers of the customs, in which goods may be deposited without being chargeable with duty until they are cleared for consumption, and thus the tax is paid when the article is wanted, and when it is least inconvenient to pay it.

Similar accommodation is granted on their own premises to the manufacturers of articles liable to excise duties. At present the customs bonding-warehouses are confined to the ports. An extension of them to inland towns would be sound in principle, very convenient to trade, and unattended by any serious risk to the revenue or difficulty of management.

The evils resulting from inconvenient modes of assessing and collecting taxes have been very seriously felt in this country under the operation of the excise laws. When any manufacture is subject to excise duties, the officers of the revenue have cognizance of every part of the process, inspect and control the premises and machinery of the manufacturer, and often even prescribe the mode of conducting and the times of commencing and completing each process; while the observance of numberless minute regulations is enforced by severe penalties. The manufacturer is put to great inconvenience and expense, and his ingenuity and resources are constantly interfered with in such a manner as to impede inventions and improvements, and to diminish his profits. A London distiller stated to the Commissioners of Excise Inquiry, that assuming that the duties on spirits distilled by him should be fully secured to the revenue, "it would be well worth his while to pay 3000*l.* a-year for the privilege of exemption from excise interference." (*Digest of Reports of Commissioners of Excise Inquiry*, p. 15.)

Any injury done to trade is injurious to the state by diminishing the national wealth and the employment of labour. It has the same effect also upon the revenue as excessive taxation. The high price of the article limits the consumption and consequently the revenue arising from it. The injurious effects of the excise restrictions "must be felt in an accumulated degree by the public who are the consumers, against whom the tax operates by the addition made to the price of the commodity, not only by its direct amount, but by the necessity of compensating the manufacturer for his advance of capital in defraying it, and also by the increased cost of production." (*Ibid.*, p. 15.) In the case of a heavy tax, which also diminishes consumption, the state, at least, derives some benefit; but in the case of onerous restrictions and impediments to trade caused by the mode of collecting a tax, the state gains nothing whatever, and the manufacturer and the consumer are seriously injured, without an equivalent to any party. If the consumer must suffer, it should, at least, be

for the benefit of the revenue, for then his contributions may be diminished in some other direction. Great attention has been paid, of late years, to the improvement of the excise regulations, especially by the Commissioners of Inquiry, under the able direction of Sir Henry Parnell. Various restrictions have been removed, especially those affecting the manufacture of glass, and it is to be hoped that the excise revenue may be found capable of being collected without inflicting greater injuries upon trade than other branches of taxation.

The net produce of a tax is all that the state is interested in, and therefore any violation of the fourth maxim of Adam Smith is liable to the same objections as those already stated in reference to the third. Such violation increases the amount of the tax directly, as the former was shown to increase it indirectly, without any advantage to the state. Facility of collection is a great recommendation to any tax; and, on the contrary, a disproportion between the cost of collecting and the amount ultimately secured is a good ground for removing a tax, though founded, in other respects, upon just principles. On this account alone, as well as for the general convenience of trade, it has been a wise policy to reduce, as far as possible, the number of articles upon which customs duties are levied. The cost of collecting the duties upon the larger and more productive articles of import bears only a small proportion to the amount of the tax, while the expense of collecting the duties on the smaller and less productive articles bears a large proportion to the tax, and may in some cases exceed it.

In England there is little variation from year to year on the gross charges of collection, but there is a considerable disproportion in the cost of collecting different branches of the revenue. In 1841 the excise cost 6*l.* 7*s.* 8*d.* per cent. in the collection; the assessed taxes 4*l.* 2*s.* 9*d.*; and the revenue arising from stamps only 2*l.* 3*s.* 4*d.*

The French revenue is collected at a much greater cost. For some years past the average revenue of that country has been 1,020,000,000 francs, or 40,000,000*l.*

and the expenses of managing and collecting that sum have amounted to 150,000,000 francs, or 6,000,000*l.*, being no less than 15 per cent. (*Commercial Tariffs, Part IV., France, 1842, p. 11.*) It is very probable that many items may be included in the French calculation of the expenses of collection which are not stated in the English accounts; but making liberal allowance on that account, a great disproportion remains between the cost of collecting the revenue in the two countries. It may perhaps be fairly estimated that the revenue of France costs twice as much in the collection as that of England. The expenses of collecting a revenue may be high without any reference to the mode of taxation. An excellent tax may be collected in a bad manner, either by having numerous idle and highly paid officers, or by cumbrous regulations and checks, which may cost the government much and protect the revenue very little. Of these two causes of expense it is difficult to pronounce which is most injurious to a country. The former will generally be found to form part of a general system of ill-regulated expenditure; the latter may arise from unwise precautions for the security of the revenue. In France the prodigious number of official persons is notorious, and in that fact we must seek for the main cause of the enormous cost of collecting the revenue.

*Different Kinds of Taxes.*—In selecting taxes for raising the revenue of a state, the principles already discussed should be adhered to as far as possible; but these do not point out any particular mode of taxation as preferable to others. Whatever mode of raising the necessary funds may be found to press most equally upon different members of the community, to be least liable to objections of uncertainty, or inconvenience in the mode or times of payment, or to be attended with the least expense, is fairly open to the choice of a statesman; unless objections of some other nature can be proved to outweigh these recommendations.

The two great divisions under which most taxes may be classed are *direct* and *indirect*.

*Direct Taxes.*—All taxes ought to be

paid from the income of the community. To derive revenue from capital is to act the part of a spendthrift; and such a practice, as in private life, must be condemned. If the taxes of any country should become so disproportioned to its income, that in order to pay them continual demands must be made upon its capital, its resources would fail, employment of labour would decrease, and the revenue must necessarily be reduced by the general impoverishment of the taxpayers. Such a system could not long continue as regards all capital, but it may affect particular branches of capital, or all capital in certain conditions. In whatever degree it is permitted to operate it is injurious. A tax upon legacies is a direct deduction from capital; and on that account objectionable, although it is profitable to the treasury and very easily collected. [LEGACY, PROBATE.] The same observations apply to the probate duty, and to duties charged upon succession to the personal property of intestates.

With these exceptions it has been the object of the British legislature to derive all taxes from income, either by direct assessment or by means of the voluntary expenditure of the people upon taxed commodities.

Direct taxes upon the land have been universally resorted to by all nations. In countries without commerce, land is the only source from which a revenue can be derived. In most of the Eastern monarchies the greater part of the revenue has usually been raised by heavy taxes upon the soil; and in Spain, at the present time, the taxes upon the soil are most oppressive and injurious.

In England, under the Saxon kings, there was a land tax. When the invasions of the Danes became frequent, it was customary to purchase their forbearance by large sums of money; and, as the ordinary revenues of the crown were not sufficient, a tax was imposed on every hide of land in the kingdom. This tax seems to have been first imposed A.D. 991, and was called Danegeld, or Danish tax or tribute. (*Saxon Chronicle*, by Ingram, p. 168.) It was originally one shilling for each hide of land, but afterwards rose to seven: it then fell to four

shillings, at which rate it remained till it was abolished, about seventy years after the Norman conquest. (Henry, *Hist.* vol. iii. p. 368.) A revenue still continued to be derived, under different names, from assessments upon all persons holding lands, which, however, became merged in the general subsidies introduced in the reigns of Richard II. and Henry IV. During the troubles in the reign of Charles I. and the Commonwealth, the practice of laying weekly and monthly assessments of specific sums upon the several counties was resorted to, and was found so profitable, that after the Restoration the ancient mode of granting subsidies was renewed on two occasions only. (*Report of House of Commons on Land Tax as affecting Catholics*, 1828.) In 1692, a new valuation of estates was made, and certain payments were apportioned to each county and hundred or other division. For upwards of a century the tax was payable under annual acts, and varied in amount, from one shilling in the pound to four shillings; at which latter sum it was made perpetual by the 38 Geo. III. c. 60; subject, however, to redemption by the landowners upon certain conditions. But no new valuation of the land has been made, and the proportion chargeable to each district has continued the same as it was in the time of King William III., as regulated by the act of 1692. That assessment is said not to have been accurate even at that time, and of course improved cultivation and the application of capital during the last 150 years have completely changed the relative value of different portions of the soil. On account of the generally increased productiveness of land, the tax bears upon the whole a trifling proportion to the rent, yet its inequality is very great. For instance, in Bedfordshire, it amounts to 2s. 1d. in the pound; in Surrey, to 1s. 1d.; in Durham, to 3½d.; in Lancashire, to 2d.; and in Scotland, to 2½d. (*Appendix to Third Report on Agricultural Distress*, 1836, p. 545.) Adam Smith imagined that this tax was borne entirely by the landlords, but this opinion has been proved to be erroneous by modern political economists, who hold that the tax increases the price

of the produce of the land, and is therefore paid by the consumers. The tax is also obviously objectionable on the ground of inequality.

A tax upon the gross rent of land would fall upon the landlord, and would be in fact a tax upon his annual income, and as such would fall with undue severity upon him, unless other classes of the community should be liable to a proportionate deduction from their respective incomes for the benefit of the state. This brings us to consider the expediency of a general tax upon all incomes.

In whatever form the tax may be levied, the contribution should be paid from income, and not from capital; and accordingly the simplest and most equitable mode of taxation would appear to be that which, after assessing the annual income of each person arising from all sources, should take from him, directly, a certain proportion of his income as his share of the general contribution. Such a tax, equitably levied, would appear to agree in theory with all the four maxims of Adam Smith; but, practically, every tax upon income must abound in inequalities, in uncertainty, and in great personal hardships and inconvenience.

In order to make such a tax fall equally upon all, in the first place, the assessment must be equal. But this is impossible, because there are many cases in which a man can conceal the sources of his income. Even if we suppose the actual income of each individual to be ascertained, the mere income of persons is a most fallacious test of their ability to bear taxation. One man has a fee-simple estate in land, or money in the funds, producing an income of 1000*l.* a year, which land or money is his absolute property, and may come to his children after his death; another, by a laborious and uncertain profession, also obtains an annual income of 1000*l.*, dependent not only upon his life, but upon his health and a thousand accidents. The annual incomes of these two men are the same, but their circumstances are most dissimilar. Yet these two men, with means so unequal, would be assessed alike, and charged with equal contributions. The professional man may spend the whole

of his income, and yet he is charged upon it just as if it were the annual produce of realized property. If he saves any part of his income, he is charged upon that part, and thus his *capital* is taxed.

The case of annuitants also may be instanced as one, amongst numerous others, of peculiar inequality. One person invests his money in permanent securities, and retains his capital, but derives a small income, and therefore contributes a proportionally small rate of tax: another purchases an annuity, and parts with his capital; but as his income is much larger than that of the capitalist, he pays a higher tax. At first sight this may appear a just arrangement; but in fact not only the income of the annuitant is taxed, but also his capital; for that which is taxed as his income is derived partly from the interest of his purchase-money, and partly from an annual repayment of a portion of his principal.

There is this essential difference between taxes upon income and taxes upon expenditure: the former are compulsory, the latter are voluntary, and paid or avoided at the option of each individual. If a man be saving money, an income-tax seizes upon his accruing capital: a tax upon expenditure is levied upon that portion of his income only which he thinks it prudent to spend.

To smooth in some degree the inequalities of an income-tax, 1st, the annual premiums on policies of insurance should not be reckoned as income in the assessment, being clearly capital, and the payments being no longer optional, as the insurance could not be discontinued without loss: this provision was made by Mr. Pitt in 1798: 2dly, incomes arising from realized property should be taxed at a higher rate than the profits of trades and professions: 3rdly, annuitants should be rated on such terms as to avoid the assessment of any portion of their capital as part of their income: 4thly, all persons should be liable to the tax, whatever may be the amount of their incomes.

In addition to the unequal pressure of an income-tax, which cannot be altogether corrected by any expedients, there

is much uncertainty in the assessment of certain classes of persons. The vicissitudes of trade, bad debts, or deferred payments, render the incomes of commercial and professional men very uncertain; and nominal income therefore, which afterwards cannot be realized, may be charged with the tax.

But the last and strongest of the objections to an income-tax is the inquisitorial nature of the investigation into the affairs of all men, which is necessary to secure a statement of their incomes. This objection, indeed, is treated lightly by some; but by the mass of the contributors it is considered the most inconvenient and unreasonable quality of an income-tax. Even if the exposure of a man's affairs could do him no possible injury, yet as an offence to his feelings, or even caprice, it is a hardship which is not involved in the payment of other taxes. But apart from matters of feeling, injury of a real character is also inflicted upon individuals by an exposure of their means and sources of income. Mercantile men, from the dread of competition, take pains to conceal from others, especially if in the same business, the application of their capital, the rate of profit realized, their connections, and their credit, all of which must be disclosed, perhaps to their serious injury, when there is an investigation of their profits.

For these reasons, the mode of collecting the income-tax certainly cannot be approved of as being "most likely to be convenient to the contributor." Its general unpopularity when in operation is the best proof of its hardship and inconvenience. Upon the whole, a tax upon income is so difficult to adjust equitably to the means of individuals, and the mode of collection is necessarily liable to such strong objection, that, if resorted to at all, it should be reserved for extraordinary occasions of state necessity or danger, when ordinary sources of revenue cannot safely be relied on.

The English assessed taxes have as few objections in principle as most modes of direct taxation. With an equitable assessment and special exemptions in certain cases, they are capable of being made to bear a tolerably just proportion to the

incomes of the individuals paying them. They share, however, in the general unpopularity of all direct taxes, and it cannot be denied that they often press unequally upon particular persons. The number of windows in a house is a very imperfect criterion of its annual value, and the house-tax which has been removed was far preferable to the window-duty, which is still retained. The inequalities in the assessments were undeniable; but these might have been corrected. Under ordinary circumstances, a tax upon houses will fall upon the occupier, who is intended to pay it; but if a very heavy tax were imposed, it would discourage the occupation of houses, lessen the demand for them, and thereby diminish the rent of the landlord, or, in other words, transfer the actual payment to him. (Adam Smith, book 5, chap. ii.; Ricardo's *Political Economy*, chap. xiv.) Such a tax would be attended with very bad consequences: it would compel many persons to live in inferior houses or in lodgings, and thus diminish their comforts and deteriorate their habits of life; and by reducing the demand for houses it would limit the employment of capital and labour in building. The direct taxes upon horses, carriages, hair-powder, armorial bearings, &c., being paid voluntarily by the rich to gratify their own taste for luxury or display, are not likely to meet with many objectors. The use of such articles generally indicates the scale of income enjoyed by the contributor, and the tax is too light to discourage expenditure or to make any sensible deduction from his means.

For arguments and illustrations concerning the incidence of tithes, of taxes upon profits, upon wages, and other descriptions of direct imposts, we refer to the works of Adam Smith, Ricardo, McCulloch, and other writers upon political economy.

*Indirect Taxes.*—In preferring one tax to another, a statesman may be influenced by political considerations, as well as by strict views of financial expediency, and nothing is more likely to determine his choice than the probability of a cheerful acquiescence on the part of the people. All taxes are disliked, and the more

directly and distinctly they are required to be paid, the more hateful they become. On this, as well as on other grounds, "indirect taxes," or taxes upon the consumption of various articles of merchandise, have been in favour with most governments. "Taxes upon merchandise," says Montesquieu, "are felt the least by the people, because no formal demand is made upon them. They can be so wisely contrived, that the people shall scarcely know that they pay them. For this end it is of great consequence that the seller shall pay the tax. He knows well that he does not pay it for himself; and the buyer, who pays it in the end, confounds it with the price." (*Esprit des Loix*, livre xiii., chap. vii.) This effect of indirect taxes is apt to be undervalued by writers on political economy; but it is undoubtedly a great merit in any system of taxation (which is but a part of general government) that it should be popular and not give rise to discontent. A tax that is positively injurious to the very parties who pay it without thought, is certainly not to be defended merely on the ground that no complaints are made of it; but it may be safely admitted as a principle, that of two taxes equally good in other respects, that is the best which is most acceptable to the people. The very facility, however, with which indirect taxes may be levied, makes it necessary to consider the incidents and effects of them with peculiar caution. The statesman has no warning, as in the cases of direct taxes, that evils are caused by an impost which is productive and which every one seems willing to pay. When any branch of industry is visibly declining, and its failure can be traced to no other cause than the discouraging pressure of a tax, the necessity of relief is felt at once; but if trade and manufactures are flourishing, and the country advancing in prosperity, it is difficult to detect the latent influence of taxes in restraining that progress, which but for them would have been greater; and still more difficult to imagine the new sources of wealth which might have been laid open if such taxes had not existed, or had been less heavy, or had been collected at different times or in different ways.

The government is directly interested in the increase of national wealth, and taxes upon commodities should be allowed to interfere with it as little as possible. On this account duties upon raw materials are objectionable. They increase the price of such materials, and thus limit the power of the manufacturer to purchase them, and to employ labour in increasing their value, and in adding to the production and capital of the country. They discourage foreign commerce and the employment of shipping; for as the power of buying is restrained, so also is that of selling, and the interchange of merchandize between different countries is checked. Moreover, by increasing the price of the exported manufactures, they limit the demand for them abroad and subject them to dangerous competition.

Similar objections may be urged against taxes upon domestic manufactures, since by increasing the price they diminish consumption, and consequently discourage the manufactures, which if left to themselves would have given employment to more capital and labour, and would have added greatly to the amount of national wealth and prosperity. The object of a government should always be to collect its revenue from the results of successful employment of capital and industry, and not to press upon any intermediate stage of production.

The British legislature has of late years very wisely repealed or reduced various duties upon raw materials and upon manufactures. Of the former we may instance the customs' duties on barilla; on raw, waste, or thrown silk; on cotton-wool and sheep's wool, unwrought-iron, hemp, and flax; and, above all, upon timber; which have been from time to time very much reduced or repealed. Of the latter, the taxes on printed goods, on candles, and on tiles, have been altogether removed; and those on malt, and on soap, have been partially remitted. As to some of the most important recent alterations see **TARIFF**. There are still many similar taxes which need revision.

One of the chief recommendations of indirect taxes is, that, when placed upon the proper description of articles, the payment of them by the consumer is optional.

If charged upon what may be strictly called the necessities of life, their payment becomes compulsory, and falls with unequal weight upon labour. Competition generally reduces a large proportion of the working classes to a state which allows them little if anything beyond necessities; consequently a duty upon these, as it will have no effect in diminishing the competition of labour and in raising wages, must reduce the comforts and stint the subsistence of labouring men.

That class of articles commonly called luxuries, of which the consumption is optional, is a fair subject of taxation. In principle there is no objection to such taxes: they do not interfere with industry or production, but are paid out of the incomes of the contributors, and paid willingly, and for the most part without undue pressure upon their means. But in laying on taxes upon particular articles of this description care must be taken to proportion the charge to the value of the article. Excessive duties fail in the very object they have in view, by rendering the revenue less productive than moderate duties; while the causes of their failure are injurious to the wealth of the country by discouraging consumption, and to its morals by offering an inducement to smuggling. [SMUGGLING.]

High duties upon foreign articles imported into a country are liable to all the objections which apply to immoderate taxes upon articles of consumption, and they are chargeable with another—they diminish importation, and thereby restrict commercial intercourse and the demand for and exportation of domestic produce and manufactures.

The success of moderate duties upon articles of consumption, in encouraging the use of them, placing them within the reach of a larger number of persons, and at the same time augmenting the revenue, was never better shown than in the article of coffee. In 1824 the duty on British plantation coffee was 1s., upon East India 1s. 6d., and upon foreign coffee 2s. 6d. per lb. In 1825 those duties were reduced one-half, and the consequence was considerably more than a threefold increase in the consumption, while the

revenue in 1841 had been more than doubled.

In 1835 coffee, the produce of British possessions in India, was admitted at the same duty as plantation coffee, viz. *6d.* per lb., and the effect of the reduction, in encouraging the growth of the plant in India and the consumption of the berry in this country, has already been very great, and perhaps the coffee-trade of the East may as yet be considered in its infancy. In 1834, the year before the reduction, 8,875,961 lbs. were imported from the East India Company's territories and Ceylon; and in 1840, 16,885,698 lbs., or nearly double. In 1842 the duty on foreign coffee was reduced to *8d.* a lb., and on coffee the produce of British possessions, to *4d.*; and notwithstanding so extensive a reduction the revenue has not very materially suffered.

Thus reductions of existing duties are proved by these examples to increase the revenue; but whether the effect of them be immediate or deferred must depend upon a variety of circumstances. If the reduction puts an end to extensive smuggling, the revenue will derive immediate benefit, as both the demand and the supply of the article already exist; and the reduced tax, without affecting production or consumption, acts as a police regulation, and at once protects the revenue from fraud. But where there is little or no smuggling, and the revenue can only be increased by means of additional consumption, the effect of reduced duties may be deferred and even remote. The article may have to be produced; capital, skill, labour, and time may be required to provide it in sufficient quantities to meet the growing demands of the consumer; and even should the supply become abundant, the habits and tastes of a people cannot be changed on a sudden. The high price of an article may have placed it out of their reach, and in the meanwhile they may have become attached to a favourite substitute, or may be slow to spend their money upon a commodity which they have learned to do without. These and other causes may defer for a considerable time such an increase of con-

sumption as would make up for the reduced rate of tax, especially when the reduction has been so great as to require an extraordinary addition to the previous amount of consumption, before the sacrifice made in the revenue can be redeemed. But where the article on which it is proposed to reduce a tax is already in universal request, and the supply immediate and abundant, and where the tax is so heavy as to restrain consumption, no present loss need be apprehended from a remission of part of the tax, and a very speedy increase of revenue may be expected. Sugar is an article of this description. It has become a necessary of life as well as a favourite luxury. There are scarcely any limits to the supply that could be raised, and the present duties add materially to the price and check consumption. As a proof of the suddenness with which the consumption of foreign sugar might be expected to increase if the excessive duty were reduced, we may refer to the effects of equalizing the duties on East and West India sugars in 1836. In that year the duty on East India sugar was reduced from 32s. the cwt. to 24s. In 1835 the quantity imported had been 147,976 cwt.; and in 1837, one year only after the change, the import had increased to 302,945 cwt.; in 1838, to 474,100 cwt.; and in 1839, to 587,142 cwt. As the tax was diminished only by one-fourth, and the consumption was immediately more than doubled, the revenue at once gained considerably by the reduction of duty.

A recent financial experiment will serve to show how little an increased revenue can be depended upon as the result of an augmentation of taxes upon articles of consumption. In 1840 an addition of 5 per cent. was made to all the duties of customs and excise, and a proportionate increase of revenue was anticipated, but not realized. The net produce of the customs and excise in the year ending January 5th, 1840, amounted to 37,911,500*l.* The estimated produce for the year ending January 5th, 1842, was 39,807,081*l.*, 1,895,575*l.* being expected from the additional 5 per cent. The actual increase, however, was only



206,715*l.*, or little more than one-half per cent., instead of the 5 per cent. which had been expected. This result was undoubtedly in part caused by a general stagnation of trade, and by the consequent distress which prevailed in that year, but we notice it because the principle of an indiscriminate augmentation of existing taxes, without reference to their present amount, character, and circumstances, is very unwise. We have said that experience alone can show the precise rate of a particular tax which will not affect consumption and will at the same time discourage smuggling. It must be presumed that existing rates have been fixed in order to secure these results, and that they are justified by experience. To add to them therefore, not because they are insufficient for their immediate object, but because a general addition to the revenue is needed, is to neglect experience and to disturb the proper relations between the amount of tax and the value of particular articles. During the last century it was a common financial course to add a general percentage of increase upon all the customs' duties whenever the revenue was found to be insufficient for immediate purposes. To this unwise policy must be attributed many of the strange anomalies which have existed in the British tariff. Any recurrence to so clumsy a mode of taxation should be avoided. The tax upon each article ought to be adjusted by itself upon sound principles, and then should not be changed merely to save the trouble or to avoid the unpopularity of selecting particular articles for increased taxation or of inventing new burthens.

*Protective, Discriminating, and Prohibitory Duties.*—The legitimate object of taxation is that of obtaining a revenue in the least injurious manner for the benefit of the community; but this object has constantly been overlooked for the sake of ends not fairly to be accomplished by taxation. Legislature should endeavour to encourage agriculture, trade, and manufactures; and it would be culpable to neglect any proper means of encouragement, which are not only beneficial to particular interests, but add to

the general prosperity. Unfortunately, however, the zeal of most legislatures upon this point has been misdirected. They have seized upon taxation as the instrument of protection and encouragement; and, using it as such, have injured the great mass of their own countrymen, and ultimately have failed in promoting the very interests they had intended to serve. When the system of protection has existed, severe injuries and even injustice are inflicted whenever an attempt is made to undo the mischief which has been done. Reason and experience unite in teaching the impolicy of protective taxes; and, in our own country, it is now acknowledged by the acts of the present year (1846) which regulate the trade in grain, meal, and flour, and other articles. [TARIFF.]

The object of a protective duty is to raise artificially the price of the produce of manufactures of one country as compared with the produce or manufactures of another. A heavy tax easily effects this object, and thus prevents competition on the part of that country whose commodities are taxed, and establishes a monopoly in the supply of those commodities in favour of the parties for whose benefit the tax was imposed. The revenue, the avowed object of a tax, so far from being improved, is here actually sacrificed by the exclusion of merchandise, which at moderate duties would fill the coffers of the state. The state clearly is a loser; the foreigner, whose goods are denied a market, is a loser. Who then gains by these losses? Not the consumer; for the more abundant the supply, the better and cheaper will he find the market; but the seller, who is enabled to obtain a high price for his wares because he has a monopoly in the sale of them, is the only party who gains. The community at large suffer doubly: first, by having to buy dear instead of cheap goods, or by being denied the use of them altogether; and, secondly, by being obliged to pay other taxes which would not have been required if the very articles which would have made their purchases cheaper had been charged with a moderate impost. Even the sellers, for whom all these sacrifices are made, do

not derive the benefit which might be expected. In the goods which they sell themselves, indeed, they are gainers; but in purchasing of other monopolists they lose by an artificially high price, like the rest of the community. It constantly happens too, that although the prices at which they sell are high, their profits are reduced, by the competition of others selling the same articles, to the general level of profits throughout the country. When this is the case, all parties, without exception, are losers—the state, the community, and the monopolists. The general injury done to trade by the protective system is too extensive a question to enter upon, but it is well illustrated in the ‘Report of the Committee of the House of Commons upon Import Duties’ in 1840; and the best refutation of the fallacies on which it is rested is in the debates in Parliament within the last few years, and especially during the present year, 1846, which has been rendered memorable by the acts above referred to.

Protection may be accomplished by actual prohibition of the import of particular articles, by exorbitant duties which amount to prohibition, or by such duties only as give the home producer an advantage. Duties may also discriminate between the produce of different countries, and give the preference to some, to the injury and exclusion of others. In this country all these modes of protection have been resorted to: but their impolicy has been recognised by the legislature, which, within the last few years, has advanced rapidly in the adoption of a more sound system of taxation. [TARIFF.]

Duties are called discriminating or differential when they are not levied equally upon the produce or manufactures of different countries. The object of them is to give an advantage to the country on whose commodities the tax is lightest, as compared with others. To obtain such a preference has been the object of various negotiations and commercial treaties between different states, as it opens extensive markets to the industry of the favoured nation. By the present commercial policy of Eng-

land, the principle of discrimination may be said to be confined to the protection of our colonies against the competition of foreign countries. As regards each other, all foreign countries enjoy equal commercial advantages in their intercourse with England. It may be contended that colonies form an integral part of the mother-country, and that the commercial intercourse between the several parts of the British empire ought to be viewed as a vast coasting-trade. If this principle were acted upon, it would certainly present a grand fiscal union worthy of admiration; but the existing system does not partake in any degree of the character of a coasting-trade. To put it upon such a footing, the duties on colonial produce imported into the United Kingdom should be little more than nominal, and we should rely upon productive imposts upon foreign produce for our revenue. Our practice is the reverse of this. Where our taxes discriminate, we derive our revenue from the colonial produce; and we either exclude foreign produce altogether, or limit its introduction so much as to prevent it from contributing materially to the revenue. The object of the duties upon the foreign produce, which would enter into competition with the colonies, is not revenue, but exclusion, for the sake of creating a monopoly in favour of the latter. There are two great articles of consumption, sugar and timber, upon which the discriminating duties have been most mischievous in their results. The question of sugar is now (July, 1846) under consideration, and will doubtless be satisfactorily settled. Though the population of the country has rapidly increased, and with it the demand for most articles of consumption, the supply of sugar is so restrained by our commercial policy that, in 1831, 3,781,011 cwt. were retained for home consumption, and in 1840 only 3,594,832 cwt. So inadequate have the colonies alone been to supply our wants, that their exports have actually been diminishing. In 1831 the West Indies exported to the United Kingdom 4,103,800 cwt. In no succeeding year has their export been so great; and in 1840 it had sunk so low

as 2,214,764 cwts. During this period the consumption of coffee, cocoa, and tea had considerably increased, and the people must therefore have suffered a serious privation on account of the limited supply of sugar. The community is a loser by the colonial monopoly; and the falling off of the produce of the West Indies, in spite of an increasing demand for it, is not the only proof that they have not gained much by their protection: meanwhile the revenue has lost incalculable sums by the exclusion of foreign sugar, which, with moderate duties, might be imported at a low price in unlimited quantities.

The discriminating duties upon timber have been very considerably modified. On the 5th April, 1847, the duty upon foreign timber will be reduced to 20s. the load, and on the 5th April, 1848, to 15s. The duty upon colonial timber is 1s. a load. The effect of these alterations will be to reduce the bounty upon colonial timber from 45s. the load to 14s.

*Export Duties.*—Duties levied upon goods exported to foreign countries are ultimately paid by the foreign consumer, and thus have the effect of making the subject of one state bear the burthens of another. However desirable this may appear to the state, whose treasury is enriched at the expense of foreigners, the expediency of such duties will depend upon peculiar circumstances, and great nicety is required in the regulation of them. If a country possesses within itself some produce or manufacture much in request abroad, and for the production of which it has peculiar advantages, a moderate export duty may be very desirable. In this manner Russia, which almost alone supplies tallow to the rest of Europe, derives a considerable revenue from an export duty upon that article. Upon the same principle a duty upon machinery exported from Great Britain would have been politic. British machinists far excelled all others in skill and ingenuity, and foreign manufacturers were willing to pay almost any price for their machinery. Notwithstanding the prohibition, large quantities have been smuggled abroad at an enormous cost, but the difficulty and expense of evasion

have been so great that foreigners have latterly almost confined their purchases, in this country, to models and drawings, and have made the machinery themselves, with the assistance of British artizans, whom they have enticed abroad by extravagant wages. (*Reports of Committees of the House of Commons on Artizans and Machinery*, in 1824 and 1825, and *On the Exportation of Machinery*, 1841.) If, instead of prohibiting the export, a duty of  $7\frac{1}{2}$  or 10 per cent. *ad valorem* had been imposed, foreign manufacturers would have paid much less for the machinery purchased by them in England than they could have had it made for abroad; there would have been a large export trade from this country, and a considerable revenue. The partial relaxation of the prohibitory law in 1825, by granting licences to export certain kinds of machinery, has shown the extent to which the trade might have been carried under a more liberal policy. The official value of machinery exported under licence in 1840 was 593,064*l.*, in addition to various tools allowed by law to be exported, of which no account was taken. (*Sess. Paper*, 1841, No. 201, p. 257.)

Though moderate export duties upon articles of which a country has almost the exclusive supply may be advisable, heavy duties will check the demand abroad in the same manner as they affect the consumption of commodities at home. In the same manner also they are injurious to trade and unprofitable to the revenue.

All duties whatever should be avoided upon the export of produce or manufactures which may be also sent from other countries to the same markets. They would discourage trade and offer a premium to foreign competition.

Although the temptation is great to shift taxes from one country to another by means of export duties, this temptation is equally great in all countries; and if their several governments should be actuated by the desire to make foreigners contribute to their revenue, their opportunities for carrying out such a system would probably be equal, and thus retaliations might be made upon each other.

which, after all, would neutralize their efforts to tax foreigners, and leave them in the same position as if they had been contented to tax none but their own subjects. In this power of retaliation lies the antidote to the evil of one state being forced to bear the burthens of another as well as its own. Every state would naturally resist such an imposition upon its subjects, and export duties can therefore only be safely resorted to in such peculiar cases as we have noticed, where foreigners are willing to pay an increased price for commodities which they must have, and which they cannot obtain so good or so cheap from any other place.

*Roman Land Tax.*—Under LAND TAX, ROMAN, a reference was made to this article.

The old Roman *Tributum* was in effect chiefly a land tax. It is described by Niebuhr (i. 459, Engl. tr.) “as a direct tax upon objects, without any regard to their produce, like a land and house tax: indeed, this formed the main part of it; included however in the general return of the census.” He states that it was by the plebs that this regular tax according to the census was paid, and its name *Tributum* was deduced from the tribes (*tribus*) of this order. All this, however, is vaguely stated and ill supported by proof. There seems no reason to doubt that the nobles (*patres*) also paid *tributum*. Livy (ii. 9) states that the plebs were released from *portoria* (port duties and tolls) and the *tributum*, in order that the rich alone might pay it. But neither is this statement satisfactory. The *tributum* is often mentioned by Livy (iv. 60; v. 10, 12; vi. 32; xxiv. 15; xxxix. 7, 44), but nothing precise can be stated about it, except that it was a tax on property, was paid in money, and applied to maintain the army after a certain date (Livy, ii. 59), and for other public purposes. The *tributum* was paid until the close of the Macedonian war, B.C. 147, when the Roman treasury was replenished by the conquest of Macedonia. It was not restored near the close of the Republican period, as is sometimes erroneously stated.

From the end of the Macedonian war

the revenue of the state chiefly arose from the taxes levied in the provinces, a great part of which were paid in kind. [CORN TRADE, ROMAN.] Italy continued free from direct taxes, though the provinces paid them, until the time of the Emperor Maximian, who established the provincial taxation in Italy. The freedom of land in Italy from all tax made a marked distinction between Italian and provincial land, and this was one of the peculiar privileges comprehended in the term *Jus Italicum*. When a provincial city received a grant of the *Jus Italicum*, it received with other privileges that of exemption from land tax: the land was then considered to be Italian land. The provincial taxes consisted of money payments and of contributions in kind, as already stated. Under Augustus a commencement was made of a general registration of property (*cadastre*), the object of which was to change all the taxes into a money payment. We may trace the progress of this change: in Cicero's time the tenths of the province of Asia were leased to the *Publicani*; in the time of Trajan a fixed sum was paid. It appears that before the time of Ulpian, who lived under the Emperor Alexander Severus, the new system was completed; and it is collected from Gaius (ii. 21), who says that provincial lands were subject either to *stipendium* or *tributum*, that this system must have been partially established even when he wrote, which was in the age of the Antonines. It is worthy of note that Cicero (*In Verem*, iii. 6) contrasts the “*rectigal certum*,” or “*stipendiarium*,” a fixed payment, which at that time obtained in some cases, with the “*ensoria locatio*,” the leasing of the tenths. Under the Christian emperors, the country was divided into equal portions of land called *capita* (heads), each of which *capita* paid a certain sum of money; and the amount of tax required for each year was distributed (*indictum*) over these several *capita*. The *cadastre* was renewed every fifteen years, and on this was founded the use of the cycle of *indictions*, a term which survived the system of taxation to which it owed its origin. The change of payment of taxes in kind into a money payment was an

improved financial measure, and it must have been beneficial to agriculture. It is true that it also offered facilities for imposing a heavier taxation whenever the government had or pretended to have a necessity for it.

The subject is discussed by Savigny, *Zeitschrift für Geschichtliche Rechtswiss.* vi. xi., *Ueber die Röm. Steuerverfassung*; and by Dureau de la Malle, *Economie Politique des Romains*, ii. 402—437, who dissents from some of Savigny's opinions, but the opinion of Savigny has been followed here.

**TAXES.** The general objects, character, and principles of taxation, and of different classes of taxes, are treated of under the head of **TAXATION**. In this place it is proposed to give a short summary of the amount and description of taxes paid in Great Britain and Ireland, whether assessed directly upon property, or collected indirectly upon articles of consumption; including not only such taxes as are paid to the general government, but also all municipal and local assessments or contributions.

#### *United Kingdom.*

The chief sources of revenue are from indirect taxes, as will be seen by the following statement, made up to 5th January, 1842 :—

	Gross Receipt. £	Rate per cent. at which collected. £ s. d.
Customs . . .	23,821,486	5 6 4
Excise . . .	15,477,674	6 7 8½
Stamps . . .	7,494,239	2 3 4
Taxes (Assessed, &c.) . . .	4,720,457	4 2 9½
Post-Office . .	1,539,274	60 9 6½
Duties on Pen- sions and Sa- laries . . .	5,752	1 17 6½
Crown Lands .	438,297	8 18 3½
Small branches of hereditary revenue . . .	5,562	
Surplus fees of public offices	93,504	
Total ordinary revenues . . .	53,596,250	6 13 8½

The assessed taxes are the window-tax,

tax on male servants, taxes on carriages, on horses, on dogs, armorial bearings, horse-dealers' duty, game duties, stage-coach duties, and duties on passengers conveyed for hire by carriages travelling on railways. In 1840 (3 & 4 Vict. c. 17, 10 per cent. additional was imposed on all the assessed taxes.

Farm-houses belonging to farms under 200l. a year are exempt from window duty. Bachelors, except Roman Catholic clergymen, pay an additional duty of 1l. on male servants. [BACHELOR.] The charges for game duties are stated under **GAME LAWS**. The duty on passengers conveyed for hire by carriages travelling on railways is 5 per cent. on the gross amount of the fares. As to the duties on stage-coaches, see **STAGE-CARRIAGE**.

To these parliamentary taxes may be added the following local assessments :—

Poor-rates	£6,551,828 (which includes county rates, 700,000l.)
Church-rates	600,000 (in round num- bers.)
Highway-rates	1,312,812
Turnpike-tolls (England and Wales)	1,577,764
Grand-jury presentments (Ireland)	1,265,866

Total of local  
taxes . . . 11,108,270

(*Parliamentary Papers*, 1839 (562), 1841 (344) (421), 1842 (135) (235).

Since the year 1842 considerable changes have been made in the Customs, some of which changes are mentioned under **TARIFF**. In the Excise also changes have been made. The excise-duty on glass has been taken off. But, on the other hand, since 5th April, 1842, the income-tax has been in operation. The income-tax was imposed April 5th, 1842, for three years, and has been renewed for another three years. In consequence of all these changes some years will elapse before it will be possible to say how far the increased consumption will make up for the direct reduction in the revenue by the diminution and repeal

of taxes, and whether it will be necessary to keep the income-tax. The produce of the income-tax for 1845 and 1846, respectively, was 5,261,954*l.* and 5,183,912*l.* So far however as we can judge, the experiment of reducing taxation has been successful, even if we look only to the revenue. The net produce of the revenue for the year ending July 5th, 1845, was 51,067,856*l.*, and for the year ending July 5th, 1846, it was 50,056,083*l.*; and this result has been obtained notwithstanding the total removal of some duties and of the excise on glass and the great reduction made in other duties. If the quarters ending July 5th in the years 1845, 1846, respectively, are compared, there is an increase on the quarter for 1846, compared with that of 1845, of 575,599*l.*, and this is the first quarter in 1845 in which many reductions took effect, while business has been materially injured in the corresponding quarter of 1846 by the delay in passing the Corn Repeal Bill and the Customs' Bill. [TARIFF.] Under these circumstances the prospect of at least an equal revenue with a reduced taxation seems to be assured, and at the same time the consumer and all classes of industrious persons are benefited by the reduction in taxation.

The tithes of Great Britain and Ireland are said to amount to 4,000,000*l.*

It is instructive to compare the present amount of taxes with that rendered necessary by a war expenditure. From 1805 to 1818 the payments into the British exchequer from taxes and loans in no one year amounted to less than 100,000,000*l.*, and in 1813 arose to the enormous sum of 176,346,023*l.*

There was published under the direction of the Poor-Law Commissioners in 1846, a valuable work entitled 'The Local Taxes of the United Kingdom, containing a Digest of the Law with a Summary of statistical Information concerning the several Local Taxes in England, Scotland, and Ireland.' England includes England and Wales. It is remarked in the Introduction that "these Local Taxes are of two kinds: the rates raised in defined districts; and the tolls, dues, and fees paid for particular services or on certain occasions. But those rates

only will be here noticed, which are authorised by general statutes or the common law; excluding such as derive their origin from special or local Acts." The rates are divided into three classes. I. Rates of independent districts, on the basis of the poor-rate. II. Rates of independent districts, not on the basis of the poor-rate. III. Rates of aggregate districts on the basis of the poor-rate. No. I. comprehends—1, The Poor Rate. 2, The Workhouse Building Rate. 3, The Survey and Valuation Rate. 4, The Jail Fees' Rate. 5, The Constables' Rate. 6, The Highway Rates (three). 7, The Lighting and Watching Rate. 8, The Militia Rate. No. II. comprehends—1, The Church Rates (three). 2, The Sewer\* Rate. 3, The General Sewers' Tax. 4, The Drainage and Inclosure Rates. 5, The Inclosure Rate. 6, The Regulated Pasture Rate. No. III. comprehends—*Counties.* 1, The County Rate. 2, The Police Rate. 3, The Shire Hall Rate. 4, The Lunatic Asylum Rate. 5, The Burial Rate.—*Hundreds.* 6, The Hundred Rate.—*Boroughs.* 7, The Borough Rate. 8, The Watch Rate. 9, The Jail Rate. 10, The Prisoners' Rates. 11, The Lunatic Asylum Rate. 12, The Museum Rate.—*Counties and Boroughs.* 13, The District Prison Rates.

The nature of many of these several rates may be collected from the article RATES and the articles referred to in that article. The nature of those rates which are not particularly mentioned in this Dictionary, is fully explained in the work published under the direction of the Poor-Law Commissioners.

The head of Tolls, Dues, and Fees comprehends—1, Turnpike Tolls. 2, Borough Tolls and Dues. 3, Light Dues. 4, Post Dues. 5, Church Dues and Fees. 6, Marriage Fees. 7, Registration Fees. 8, Justiciary Fees.

The following statement is given in the work published under the direction of the Commissioners, as an approximate summary of the present annual amount of the Local Rates in England and Wales (p. 178).

\* The 3 & 4 Wm. IV. c. 22, the chief provisions of which act have been stated under SEWERS, was amended by 4 & 5 Vict. c. 45.

	£
The Parish Rates :—	
Poor-rate, including the Workhouse Building Rate, and the Survey and Valuation Rate . . . .	
Relief of the Poor . . . .	4,976,093
Other objects . . . .	567,567
Contributions to County and Borough Rates . . . .	See below
The Jail Fees' Rate . . . .	Unknown
The Constables' Rate . . . .	do.
The Highway Rates . . . .	1,312,812
The Lighting and Watching Rate . . . .	Unknown
The Militia Rate . . . .	Not needed
The Church Rates . . . .	506,812
The Sewer Rate, and the General Sewers' Tax—	
In the Metropolis . . . .	82,097
In the rest of the country . . . .	Unknown
Drainage and Inclosure Rates, The Inclosure Rate, The Regulated Pasture Rate . . . .	Unknown
The County Rates	Contributed from the Poor-Rate } 1,356,457
The Hundred Rate	
The Borough Rate	
	£8,801,838
Tolls, Dues, and Fees . . . .	2,607,241
	£11,409,079

Some of the taxes are regularly increasing, and the produce of some, as appears from this table, is not known. It is assumed that the Local Taxation of England and Wales may be in round numbers twelve millions; but this estimate, as already shown, does not include the sums raised under special or local acts, of the amount of which sums no estimate can be formed.

A century ago the Poor-Rate was about 700,000*l.*; it is now about 7,000,000*l.* In 1818 it was 9,320,000*l.* But the sums levied under the name of the Poor-Rate are expended on various purposes besides the relief of the poor.

The work published under the direction of the Poor-Law Commissioners contains a chapter on the Local Taxes of Scotland written at the request of the Poor-Law Commissioners by J. Hill Burton, Advocate, Edinburgh.

The Local Taxes in Scotland are distributed by Mr. Burton under the following heads :—

I. Administration of Justice, which includes Criminal Prosecutions, Court Rooms and County Buildings, Rural Police, Town Police, Prisons. II. Internal Transit, which includes Commutation Roads, Turnpike Roads, Highland Roads and Bridges. III. Navigation. IV. Civic Economy, which includes, Direct Municipal Taxes, Petty Customs, Miscellaneous Burdens. V. Relief of the Poor. VI. The Church and Education, which includes The Church of Scotland Education. VII. Miscellaneous Taxes.

Mr. Burton observes “that the money expended on the ecclesiastical establishment and on education, partakes, in some respects, of the nature of a tax.” The amount of money annually levied by local taxation in Scotland is not accurately known. The sum of 956,678*l.* is the approximate amount given by Mr. Burton.

The Local Rates levied in Ireland are distributed under the following heads in the work published under the direction of the Poor-Law Commissioners.

- I. Grand Jury Cess (in all the counties, including counties of cities and towns).
- II. Poor-Rates (in 130 Unions, comprising every townland and denomination of land in Ireland).
- III. Lighting, Cleansing, and Watching Rates (in all cities, towns, and boroughs which may adopt the provisions of the statute).
- IV. Borough Rates (in certain Boroughs).
- V. Pipe Water Rates (in every city and town, except Dublin, Cork, and Limerick, which gives title to a bishop or archbishop).
- VI. Parish Cess (in all parishes, unions of parishes, or chapelries in Ireland).
- VII. Rates for deserted children (in all parishes in Ireland, except those in the city of Cork).
- VIII. Ministers' Money (in cities and towns corporate in Ireland).

IX. Board of Health Rates (in parishes in which the lord lieutenant shall direct officers of health to be appointed).

“Besides the above rates leviable under general acts of parliament, there are rates leviable under special acts in many places, as Dublin, Cork,” &c. No account is given in the work here referred to of the provisions of these special acts, but the amount of the sums levied under them, which is considerable in some places, is given so far as it has been obtained.

£

The rates for Ireland are given

at . . . . .	1,631,818
Tolls, Dues, and Fees . . . . .	199,469

£1,831,287

The amount of annual local taxation of Great Britain and Ireland accordingly amounts to 14,197,044*l.* But it is observed that if the deficient information were supplied, it would appear to be at least 15,000,000*l.* a year; and this, as already observed, does not include the local taxes raised in particular places under special acts of parliament. The sum raised by general taxation in the United Kingdom for the year ended 5th January, 1846, was 51,719,118*l.* The amount of the local and general taxation is accordingly about 67,000,000*l.* a year. The public expenditure for the year ending 5th January, 1846, was 49,961,411*l.*, of which sum 28,253,872*l.* was paid on account of the Funded and Unfunded Debt. This leaves somewhat under 21,000,000*l.* for the rest of the general public expenditure. Accordingly the present amount of the local taxation, 15,000,000*l.*, is nearly equal to three-fourths of the public expenditure after deducting the payments on account of the Funded and Unfunded Debt. It is well remarked in the work from which these facts are derived (p. 190), “when the Local Taxes are brought under review in this collective amount, it then at once becomes manifest how really deserving of serious consideration are the modes of raising and expending them, so as to secure the most efficient and economical management of a revenue so large and important: a revenue, in-

deed, which derives its importance not only from the largeness of its aggregate sum, but from the extent of the property and the number of persons affected by it, and from the numerous and diversified public objects to which it is applied.”

Information about the several taxes of European States will be found in the Parliamentary Paper, No. 227, of 1842, ordered by the House of Commons to be printed, 3rd May, 1842.

TEA. The first importation by the English East India Company took place in 1669 from the Company's factory at Bantam. The directors ordered their servants to “send home by their ships one hundred pounds weight of the best *tey* they could get.” In 1678, 4713 lbs. were imported, but in the six following years the entire imports amounted to no more than 410 lbs. The continuous official accounts of the trade do not commence before 1725; but, according to Milbourn (*Oriental Commerce*), the consumption in 1711 was 141,995 lbs.; 120,695 lbs. in 1715; and 237,904 lbs. in 1720. In 1725 the quantity of tea retained for consumption was 370,323 lbs. at which time the customs' duty was 13*l.* 18*s.* 7½*d.* per cent., and the excise was 4*s.* per lb. In 1745 the amount was 730,729 lbs., and in that year the excise was made 1*s.* per lb. and 25 per cent. on the price. In 1747 the customs' duty was 18*l.* 18*s.* 7½*d.* per cent. and the quantity in the year was 2,382,775 lbs. In 1759 the customs' duty was 23*l.* 18*s.* 7½*d.* per cent. and the quantity was 3,957,744 lbs. In 1782 the duty per cent. was 27*l.* 6*s.* 10*d.*, the highest amount that the duty ever reached, and there was an increase in the excise also; the quantity in the year was 4,691,000 lbs. In 1784 the quantity was 4,948,983. In 1785 the customs' duty was 12½ per cent. and the excise duty was repealed; the quantity in that year was 10,856,578 lbs. In 1786 the customs' duty was 5 per cent. on the gross price, and an excise duty of 7½ per cent. on the gross price was laid on. The quantity in that year was 12,539,389 lbs. The quantity went on increasing up to 1834, and in the meantime the customs' duty was very little raised, and in 1819 it was repealed. The excise duties were



changed very often. When the customs' duty was repealed in 1819, the excise duty was made 96 per cent. on the gross price when it was under 2s. a lb., and 100 per cent. when it was above 2s. per lb. From 1834 included, in which year the excise duty was repealed, the quantities in each year to 1841 and the customs' duties were as follows:—

Years.	lbs.	
1834	34,969,651	Bohea, 1s. 6d.; Excise Congou, Twan- duty kay, &c. 2s. 6d.; repealed. Hyson, &c., 3s. per lb.
1835	36,574,004	" "
1836	49,142,236	After 1st July " all sorts 2s. 1d. per lb.
1837	30,625,206	" "
1838	32,351,593	" "
1839	35,127,287	" "
1840	32,252,628	" 2s 2½d. "
1841	36,675,667	" "
1842	37,355,211	" "
1843	40,293,393	" "
1844	41,363,770	" "

For above a century and a half the sole object of the East India Company's trade with China was to provide tea for the consumption of the United Kingdom. The Company had an exclusive trade, and were bound to send orders for tea, and to provide ships to import the same, and always to have a year's consumption in their warehouses. The teas were disposed of in London, where only they could be imported, at quarterly sales; and the Company was bound to sell them to the highest bidder, provided an advance of one penny per lb. was made on the price at which each lot was put up, which price was determined by adding together the prime cost at Canton and the bare charges of freight, insurance, interest on capital, and certain charges on importation; but by the mode of calculating these items, and the heavier expenses which always attend every department of a trade monopoly, the upset prices were greatly enhanced. The prices realised at the Company's sales were, however, in still greater proportion beyond the upset prices, a result easily pro-

duced by a body who monopolized the sole supply, as it was only necessary that the quantity offered for sale should not be augmented in proportion to the growing demand of a rapidly increasing population. The 18 Geo. II. c. 26, passed immediately after a large reduction of the duty had taken place, provided for such a contingency as this, by enacting that if the East India Company failed to import a quantity sufficient to render the prices as low as in other parts of Europe, it should be lawful to grant licences to other persons to import tea. This would have constituted a very efficient check if it had been acted upon; but eventually the mode of levying the duty gave the government almost the same interest in a restricted supply as the East India Company, the duties being collected *ad valorem* on the amount realised at the Company's sales; and thus the very circumstance which enhanced the price raised the total amount of duty. The duty was nominally 90 and 100 per cent *ad valorem*, but being charged on a monopoly price, the difference on the cheaper teas consumed by the working and middle classes amounted to above 300 per cent. on the cost price of the same teas at Hamburg; and in 1839 the difference between the prices realised at the Company's sales and the Hamburg prices amounted to a sum of 1,889,975*l*.

The Company's sales were in March, June, September, and December, the last being the largest. About 2,000,000 lbs. were offered belonging to the officers of the Company, who were allowed to import a certain quantity of tea on their own account. In 1839 there were only 122,312 lbs offered for sale by the East India Company. The 3 & 4 Wm. IV. c. 93, on the 22nd of April, 1834, opened the trade to China. The importation of tea is no longer confined to the port of London. In 1839 eighteen ships arrived inwards from China at different outports, ten of which were entered at Liverpool. In the four years ending 1834 the average annual number of ships entered inwards from China at the ports of the United Kingdom was 23, in the four following years the average was 66, and other commodities besides tea have been extensively

imported, and a corresponding increase in the quantity and variety of the exports to China has taken place. The exports of tea from the United Kingdom, which formerly did not exceed a quarter of a million lbs. annually, amounted to 4,347,432 lbs. in 1841, and have averaged above three million lbs. a-year since the opening of the trade, a fact which shows that prices here are no longer so much above those of the principal continental ports. The quantity retained for consumption has also considerably increased, although accompanied by an extraordinary increase in the use of coffee.

The tea-duty produces about one-twelfth of the total revenue. The tariff of 1842 made no alteration in the tea-duty. As it was foreseen that on the opening of the tea-trade there would be a considerable reduction of price, and that an *ad valorem* duty would not, even with the increased consumption, be so productive as formerly, a fixed duty of 2s. 1d. per lb. was imposed in 1836. Up to March, 1836, each of the hundred thousand tea-dealers in the United Kingdom was visited once a month by the officers of excise, who took an account of his stock; and no quantity exceeding six pounds could be sent from his premises without a permit, of which above 800,000 were required in a year. The number of tea-dealers in 1839 was 82,794 in England; 13,611 in Scotland; 12,774 in Ireland; total 109,179. Tea is now sold by the importing merchants by public auction and private sales.

The following table shows the net amount which the tea-duty has yielded in the United Kingdom in each of the following years during the present century, and, to some extent, it is an index of the prices in each year.

£	£
1801 1,423,660	1841 3,973,668
1810 3,647,737	1842 4,088,957
1820 3,484,226	1843 4,407,642
1830 3,387,097	1844 4,524,193
1840 3,472,864	

Between 1831 and 1841 the population increased 14 per cent., and the increase in the consumption of tea was 16½ per cent. The low prices of 1836, and the general prosperous condition of the

country, raised the quantity which paid duty for consumption to nearly 50,000,000 lbs. In 1840 prices were about 25 per cent. higher, large classes of consumers were in a distressed state, and the consumption fell to 32,000,000 lbs. In 1841 the distress still continued, but prices were lower, and the consumption rose to above 36,000,000 lbs. On the 5th of Jan., 1840, the stock of tea in London, Liverpool, Bristol, Glasgow, and Leith was 35,478,490 lbs.; and at the corresponding period in 1841 the quantity was 46,545,610 lbs. The proportion of black to green teas consumed in England is about as 5 to 1; but in the United States the use of green tea is greatest.

The duty on tea is still too high, and it is certain that an increased consumption would follow a diminution of the duty.

(*Papers issued by the Chinese and East India Association; Parl. Papers, &c.*)

The total export of tea from Canton to Europe and America exceeds 50,000,000 lbs. Russia is supplied with 6,500,000 lbs. *via* Kiakhia; the United States of America require about 8,000,000 lbs.; France about 2,000,000 lbs.; and Holland imports about 2,800,000 lbs.

TELLERS OF THE EXCHEQUER were the holders of an ancient office in the Exchequer. They were four in number: their duties were to receive money payable into the Exchequer on behalf of the king, to give the clerk of the pells (skins or rolls of parchment) a bill of receipt for the money, to pay all money according to the warrant of the auditor of receipts, and to make weekly and yearly books of receipts and payments for the lord treasurer. (4 *Inst.*, 108; *Com. Dig.*, tit. 'Court,' D. 4, 14, 15.) The office was abolished by act of parliament (4 & 5 Wm. IV. c. 15), together with that of the clerk of the pells and the several offices subordinate thereto, and a comptroller-general of the receipt and issue of his Majesty's Exchequer was appointed to perform the duties of the four tellers. (4 & 5 Wm. IV. c. 15.)

TENANCY. [TENANT.]  
 TENANCY, JOINT. [ESTATE.]  
 TENANCY IN COMMON. [ESTATE.]

**TENANCY IN COPARCENARY.**  
[ESTATE.]

**TENANT.** Tenants, in the more extended legal sense of the word, are of various kinds, distinguished from each other by the nature of their estates; such as tenants in fee simple, in fee tail, for life, for years, at will, and at sufferance. [ESTATE; TENURE.]

**TENANT AND LANDLORD.** The word tenant, in the more limited legal sense, which is also the popular sense, is one who holds land under another, to whom he is bound to pay rent, and who is called his landlord. The word Land means not only land itself, but also all things, such as buildings, houses, woods, and water, which may be upon it. Any one who has an estate in land, provided he is also in possession, may let the land to another. Where the letting takes place by an express contract between the parties, the contract is called a Lease, the nature of which is explained generally under LEASE. The loss of a lease will not destroy the tenancy, provided the previous existence and the terms of it can be proved.

But the relation of landlord and tenant may be created otherwise than by a formal lease. If one man with the consent of another occupies his land, a contract of letting is assumed to have been made between them, and the occupier becomes tenant to the owner. Such tenants are considered to be upon the same footing as if the lands had been let to them for a year dating from the commencement of their occupation. At the end of the first year, a second year's tenancy begins, unless six months' notice of the intention to determine the contract has been given by either party to the other, and so on from year to year. The same rule of law applies to cases where a tenant continues to occupy land after the expiration of a lease made by deed; but in this case all the covenants of the expired lease as to payment of rent, repairs, insurance, and the like, are in force unless the lease is cancelled by destroying the seal; and even if there should be a verbal agreement for a different rent, still the old covenants subsist, unless the lease is cancelled. [DEED.]

Besides tenancies for fixed periods, a tenancy may exist at Will and by Sufferance. [ESTATE.] The law as to landlord and tenant generally applies, so far as it is not restricted or varied by the particular circumstances of a contract between the parties, and so far as the circumstances render it applicable, to the case of the letters and occupiers of lodgings.

In every case where the relation of landlord and tenant exists, either by express or by implied contract, certain terms are implied by law to have been agreed upon by the parties as forming part of the contract. It is of course in the power of the parties, where the contract is express, to qualify these terms so implied by the language of the contract itself. But it may be observed that as these terms are comprehensive in their nature, and distinctly understood in law, the interests of parties are often better consulted by leaving them to the general protection afforded by these implied terms than by attempts to define by enumeration in detail the respective rights and duties of the landlord and tenant. The terms implied on the part of the landlord are, that the tenant shall quietly enjoy the premises without let or hindrance from the landlord; on the part of the tenant, that he will pay rent, keep the premises in repair to a certain extent, as hereafter mentioned, and use the land, &c. in a fair and husbandlike manner.

When the landlord is himself tenant of the premises to a superior landlord, and neglects to pay his rent, and the occupying tenant is called upon to pay it to the superior landlord, he may do so, and set it off against the rent due from him to his own landlord. If a tenant has covenanted without exception or reservation to pay rent during the term for which the lease has been granted to him, he will be bound to pay it even if the premises should be destroyed by fire or other casualty. If he should have assigned his lease to another and ceased to be in possession, he will still remain liable under his covenant to pay rent.

The rules of law as to the repairs of premises may be determined by the terms of the lease. If they are not determined

ly the terms of the lease, they are somewhat uncertain and depend on a variety of circumstances, which are laid down in law treatises.

No tenant, in the absence of an agreement to that effect, is bound to rebuild after accidental destruction of the premises by fire. But under a general covenant to repair, and *leave repaired*, the tenant is bound to rebuild even in the case of destruction by fire.

In agricultural tenancies the lease generally determines the mode in which the farm is to be treated. [LEASE.] Unless also the lease expressly or impliedly excludes the operation of the custom of the country, the tenant is bound to conform to it. The custom of the country means the general practice employed in neighbouring farms of a similar description, with reference to rotation of crops, keeping up fences, and other like matters. In leases of farms it is often the practice to protect the landlord against certain acts of the tenant, such as ploughing up meadow land, &c., by introducing certain provisions into the lease. These provisions may operate according to the phraseology used, either to assign a penalty or to determine the liquidated damages agreed to be paid for the act done. It is often a matter of great importance and of some nicety to determine under which class the provisions fall. If under the first, the landlord is not entitled to the whole penalty upon the act being done, but he can only recover in an action the amount of the actual damage which has accrued. If under the second, he is entitled to the whole amount of the damages agreed on. A covenant by a tenant not to plough up meadow under a penalty of 5*l.* for every acre ploughed, is an instance of the first class: a covenant to pay 5*l.* rent for every acre of meadow ploughed up, is of the second class. The right to timber and timber-like trees belongs to the landlord; loppings of pollards and bushes, to the tenant. Different definitions prevail in different counties of timber and timber-like trees, and various customs prevail as to what amount of wood the tenant may be allowed to employ (after the landlord has been called on to select it) for the purposes of the

farm. No tenant, unless he employs the land as a nurseryman or gardener, can remove any kind of shrub from the soil. Neither can a tenant remove fixtures, though put down by himself. A fixture is a chattel which is let into the soil, or united to some other which is let in. There are some exceptions to this rule in favour of fixtures used for the purpose of trade or agriculture, or merely ornamental purposes, where the removal will cause little or no damage. (Amos and Fearard, *On Fixtures*.)

The tenant in occupation of the premises is, in the first instance, liable for all taxes and rates of every description due in respect of the premises. The party therefore who is authorised to collect them may proceed against the tenant in occupation to recover them. It is generally a matter of agreement between the landlord and tenant that the tenant shall pay all rates and taxes except the land tax; and sometimes it is agreed that the landlord shall pay the sewer rate also. If, however, the landlord has undertaken to pay the tenant the rates and taxes, and fails to do so, the tenant may deduct the amount from his rent, or bring an action to recover it; but this should be done during the current year, and if the tenant allows a considerable time to elapse without claiming a deduction or bringing an action, he will be held to have waived his claim to recover them from the landlord.

Where a fixed rent has been agreed upon, has become due, and is neither paid nor tendered, the landlord, with certain exceptions, can seize growing crops, any kind of stock, goods, or chattels, upon the premises, or pasturing any common enjoyed in right of the premises, whether such things are the actual property of the tenant or not; and if the rent remains unpaid, he may sell them. It follows from this general rule that a landlord can distrain on the goods of a lodger who occupies under his tenant. [DISTRESS; RENT.]

AS TO A SURRENDER OF A LEASE, see STATUTE OF FRAUDS.

A forfeiture of a lease may arise either by a breach by the tenant of one of those conditions which are implied by or at-

tached to the relation of landlord and tenant, as where a tenant disclaims or impugns the title of his landlord by acknowledging, for instance, the right of property to be vested in a stranger, or asserts a claim to it himself, or by a breach of a condition which is expressly introduced into the lease, the breach of which is to be attended with a forfeiture of the tenancy, as a condition to pay rent on a particular day, to cultivate in a particular manner, &c. To this head may be referred provisos in a lease for re-entry by the landlord on the doing or failure in doing of certain acts by the tenant, such as the commission of waste, the failure to repair, &c. The courts are said to be unfavourable to forfeitures: therefore, when the landlord has notice of an act of forfeiture, or an act which entitles him to re-enter, he must immediately proceed in such a way as to show that he intends to avail himself of his strict legal right. If after the commission of the act he does anything which amounts to a recognition of the tenancy, as by the acceptance of rent subsequently due, he will have waived his right to insist upon the forfeiture.

A yearly tenancy, where no period of notice is agreed on, must be determined by a notice to quit at the expiration of the current year, given six months previously. In the case of lodgings, the time, when less than a year, for which they are taken, will be the time for which a notice is necessary. Thus lodgings taken by the month or week require a month's or week's notice.

The notice to quit need not be in writing, though, from the greater facility of proving it, a written notice is always better. It should distinctly describe the premises, be positive in its announcement of an intention to quit or require possession, be signed by the party giving it, and served personally upon the party to be affected by it.

If a tenant, after having given notice to quit, continues to occupy, he is liable to pay double rent. If he does so, no fresh notice is necessary. If he continues to occupy after the landlord has given him notice, he is liable to pay double value for the premises.

At the expiration of the lease, the tenant is bound to deliver up possession of the premises; but if either by special agreement or by the custom of the country the tenant is entitled to the crops still standing on the land, and which are called away-going crops, he may enter for the purpose of gathering them, and also use the barns and stables for the purpose of threshing them. The incoming tenant may also enter during the tenancy of the preceding tenant to plough and prepare the land.

As to the recovery of rent by action see RENT.

If the tenant refuses to deliver the possession of the land, the landlord may bring an action of ejectment to recover it, and the process is simplified by 4 Geo. II. c. 28. [RENT, p. 637.]

By the 11 Geo. II. c. 19, and 57 Geo. III. c. 52, if a tenant, under any lease or agreement, written or verbal, though without a clause of re-entry, of lands at a rack-rent, or rent of three-fourths the yearly value, shall be in arrear for half a year's rent, and shall leave the premises deserted and without sufficient distress, any two justices of the county, at the request of the landlord, may go and visit the premises, and fix on the most conspicuous part of them notice in writing on what day, distant fourteen days at least, they will return again to view the premises; and if on the second day no one appears to pay the rent, and there is no sufficient distress on the premises, the justices may put the landlord into possession, and the lease shall become void. These proceedings are subject to appeal before the judges of assize for the same county at the ensuing assizes.

By 1 & 2 Vict. c. 74, where the interest of any tenant of land, &c., at will, or for a time less than seven years, liable to the payment either of no rent or a rent of less than 20*l.* a year, shall have ended or been duly determined, and the tenant shall refuse to quit, the landlord may serve him with a notice, a form for which is given in the act, to appear before a justice for the county; and if he fails to show satisfactory cause why he should not give up possession, the justices, on proof of the tenancy and of the expiration

of it, may give possession to the landlord. If the landlord was not at the time of the proceedings lawfully entitled to possession, he will be liable to an action of trespass at the suit of the tenant, notwithstanding the act of parliament.

(Woodfall's *Landlord and Tenant*; Coote's *Landlord and Tenant*.)

TENANT AT SUFFERANCE.

[ESTATE.]

TENANT AT WILL. [ESTATE.]

TENANT FOR LIFE. [ESTATE.]

TENANT FOR YEARS. [ESTATE;

LEASE.]

TENANT IN FEE SIMPLE. [ESTATE.]

TENANT IN TAIL. [ESTATE.]

TENANT-RIGHT is the name for a species of customary estates peculiar to the northern parts of England, in which border services against Scotland were antiently performed before the political union of the countries. Tenant-right estates were holden of the lord of the manor by payment of certain customary rents and the render of the services above mentioned, are descendible from ancestor to heir according to a customary mode differing in some respects from the rule of descent at common-law, and were not devisable by will either directly or by means of a will and surrender to the use of the same, though they are now made devisable by 1 Vict. c. 26, s. 3. Although these estates appear to have many incidents which do not properly belong to villeinage tenure or copyhold, not being holden at the will of the lord, or by copy of court roll, and being alienable by deed and admittance thereon, it has been determined that they are not freehold, but that they fall under the same general rules as copyhold estates. (*Doe v. Reay* v. Huntingdon, 4 East, 271.)

TENDER. A tender is the offer to perform some act. In practice it generally consists in an offer to pay money on behalf of a party indebted, or who has done some injury, to the creditor, or to the party injured.

A tender to the amount of 40s. may be in silver; but beyond that amount it must be in gold, or in Bank of England notes payable to bearer on demand for any sum above 5*l*. (3 & 4 Wm. IV. c. 6.)

If a tender be made of a larger amount in silver, or in country bank-notes, and no objection be taken at the time to the silver or notes, the objection to the tender on that ground is waived, and the tender is good to the amount to which it is made. The money must be produced and shown, or the bag or other thing which contains it shown to the party to whom it is intended to be given, unless this is dispensed with by some declaration or act of the creditor. This is insisted upon with such strictness, that even though a party tell his creditor that he is about to pay him so much, and put his hand into his pocket to produce the money, yet if the creditor leave the presence of the debtor before the money is actually produced, no tender will have been made: but if the creditor refuse to receive the money mentioned on the ground that it is insufficient in amount, the actual production of it is not necessary to constitute a valid tender. The offer must be absolute and without conditions. An offer of a larger amount with a request of change; an offer with a request of a receipt, or on condition that something shall be done on the part of the creditor, are not valid tenders; but an offer of a larger sum absolutely without a demand of change is good. A tender may be made either to the party actually entitled to receive it, or to an agent or servant authorised to receive it, or to a managing clerk; and a tender will not be invalidated even though before it is made the creditor has put the matter into the hands of his attorney and the managing clerk of the creditor refuses to receive it, and assigns that circumstance as his reason for doing so. If the attorney write to the debtor demanding the money, a tender afterwards made to him or to his managing clerk is good, unless at the time when it is made they disclaim authority to receive the money. A tender ought to be made on behalf of the party from whom the money is due; if the agent appointed by him to make the tender offer a larger sum than he is authorised to do, the tender will nevertheless be good for the full amount to which the tender is made.

If the defendant in an action plead a

tender, he must state that he has always been ready to pay the money, and he must also pay it into court. The effect of the plea is to admit the existence of the contract or other facts stated in the declaration which form the cause of action in the plaintiff. The plea goes only in bar of damages. The plaintiff therefore in such case can never be nonsuited: but if issue is taken on the mere fact whether or not the tender has been made, and that fact is found for the defendant, it is a good defence to the action.

By various statutes, magistrates, officers of excise, &c., are empowered, after notice of action to be brought against them, to tender amends; and if the amount tendered is sufficient, the tender is a defence to the action.

**TENEMENT**, in its usual and popular acceptation, is applied only to houses and other buildings; but in its original, proper, and legal meaning it includes everything of a permanent nature that may be an object of tenure, or may be held in the legal sense, whether corporeal or incorporeal. It is sometimes applied in a more confined sense to objects of feudal tenure; in general, however, it includes not only land, but every modification of right concerning it. Thus the word "*Liberum tenementum*," frank-tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, and the like. [ESTATE, TENURE.] (Harg., Co. Litt., 154, a. n. 7.)

**TENTHS** are the tenth part of the yearly value of all ecclesiastical livings. They were formerly claimed by the pope; and his claim was sanctioned, in this country, by an ordinance in the 20th year of Edward I., when a valuation of all livings was made, in order that the pope might know the amount of his revenue from this source. The possessions afterwards acquired by the church were not liable to the payment of tenths to the pope, as all livings continued to be charged according to that valuation. (Coke, 2 *Inst.*, 627.) When the authority of the pope was extinguished at the Reformation, Henry VIII. transferred the revenue arising from tenths to the crown, and had a new valuation of all the livings, so as to obtain the tenth of their true yearly value

at that time. (36 Hen. VIII. c. 3, s. 9-11.) By royal grants under 1 Eliz. c. 19, s. 2, the Archbishop of Canterbury and the Bishop of London were exempted from tenths, and were also authorised to receive the tenths of several benefices as a compensation for certain estates which were alienated from their sees. By the 6 Anne, c. 24, all benefices were discharged from the payment of tenths which, at that time, were under the annual value of 50*l.*, except those of which the tenths had previously been granted by the crown to other parties. There are also some other special exemptions. At the present time, out of 10,498 benefices, with and without cure of souls, there are 4898 which remain liable to tenths. (*Parl. Rep. First-Fruits and Tenths*, 1837, No. 384.) Queen Anne gave up the revenue arising from tenths, as well as from first-fruits, which had been enjoyed by her predecessors since the Reformation, and by act 2 and 3 of her reign, c. 11, assigned it to the augmentation of poor livings; for which purpose she erected a corporation by letters patent in 1704 to administer the funds, called the Governors of Queen Anne's Bounty. This act declared that episcopal sees and livings not exempted should continue to pay in such rates and proportions only as heretofore, or according to the valuation of Henry VIII., commonly known as the "*King's Books*." Tenths under the act 1 Vict. c. 20, are collected by the Treasurer of the Governors of Queen Anne's Bounty. Payment is enforced by Exchequer process, when not duly made, and the treasurer is required to give notice of arrears within one month after the proper time of payment. In case of a living being vacated, the Exchequer is empowered by act 26 Hen. VIII. c. 3, s. 18, to recover arrears of tenths, not only from the executors and administrators, but also from the successor of the last incumbent. (2 Burn's *Ecclesiastical Law*, 9th ed., pp. 273-295.) [BENEFICE; FIRST-FRUIT.]

**TENURE**. The general nature of tenure and its origin and history in England are explained in the article **FEDERAL LAW**. A few remarks may be made here on tenure as at present existing by

the law of England, for which purpose a short recapitulation is necessary.

All land was and is held of the king either mediately or immediately. All tenures were distributable under two general heads, according as the services were free or base; and consequently there was the general division of tenures into Frank-tenement or free-holding, and Villeinage. The act of Charles II. (12 Car. II. c. 24) abolished military tenures, which were one kind of free services, and changed them into the other species of free services, namely free and common socage. Thus one tenure in socage was established for all lands held by a free tenure, which comprehended all lands held of the king or others, and all tenures except tenures in frankalmoigne, copyhold, and the honorary services of grand-serjeanty: and it was enacted by the same act that all tenures which should be created by the king in future, should be in free and common socage. It is particularly provided in the act which abolishes military tenures, that it shall not alter or change any tenure by copy of court-roll, or any services incident thereto, nor take away the honorary services of grand-serjeanty, other than charges incident to tenure by knights' service.

Thus it appears that tenure is still a fundamental principle of the law relating to land in England.

All land in England which is in the hands of any layman is held of some lord, to whom the holder or tenant owes some service. It is by doing this service that the tenant is entitled to hold the land: his duty is a service, and the right of the lord is a Seignory. The word tenure comprehends the notion of this duty and of this right, and also the land in respect of which the duty is due: the land is a Tenement. As already observed, all land is held either mediately or immediately of the king; and ultimately all land is held of the king. He who is the owner of land in fee simple, which is the largest estate that a man can have in land, is not absolute owner: he owes services in respect of his fee (or fief), and the seignory of the lord always subsists. This seignory is now of less value than it was, but still it subsists.

The nature of the old feud was this: the tenant had the use of the land, but the ownership remained in the lord; and this is still the case. The owner of a fee has in fact a more profitable estate than he once had; but he still owes services, fealty at least, and the ownership of the land is really in the lord and ultimately in the king. For all practical purposes the owner's power of enjoyment is as complete as if his land were allodial; but the circumstance of its not being allodial has several important practical consequences.

No land in England can be without an owner. If the last owner of the fee has died without heirs, and without disposing of his fee by will, the lord takes the land by virtue of his seignory. If land is aliened to a person who has a capacity to acquire but not to hold land in England, the king takes the land; this happens in the case of lands being sold to an alien. If a man commits treason, his freehold lands are liable to be forfeited to the king, and his copyhold estates to the lord of the manor, in the form and under the limitations and conditions explained in *LAW, CRIMINAL*, p. 183. If a man commits a felony, his freehold and copyhold lands are subject to forfeiture in the manner stated in *LAW, CRIMINAL*, p. 185. These forfeitures are consequences of tenure.

The case of church lands seems something peculiar. They are held by tenure though no temporal services are due. This is the tenure in frankalmoigne, which is explained under *FRANKALMOIGNE*.

Tenure in frankalmoigne is now exactly what it was before the 12th of Charles II. was passed. Church lands then, which are held in frankalmoigne owe no temporal services, but they owe spiritual services, and the lord of whom they are held must be considered the owner. And this conclusion is consistent with and part of the law of tenure, by which no land in England is ever without an owner. Church land differs from land held by laymen in this, that the beneficial ownership can never revert to the lord, for all spiritual persons are of the nature of corporations, and when a



parson dies, the corporation sole (as he is termed by an odd contradiction in terms) is not extinct, and it is the duty and right of some definite person to name a successor. It is stated by Blackstone (i. 470) that "the law has wisely ordained that the parson, *quatenus* parson, shall never die any more than the king, by making him and his successors a corporation; by which means all the original rights of the parsonage are preserved entire to the successor: for the present incumbent and his predecessors who lived seven centuries ago, are in law one and the same person." But notwithstanding this ingenious attempt to make one man, together with others not ascertained, a corporation, which term means one juristical person composed of more than one natural person, the difficulty really is, that when a parson dies, there is no person who has a legal ownership of the land until a successor is appointed, if Blackstone's theory is true. The comparison of the case of a parson with that of the king is unapt, for the successor to a deceased king is ascertained by the death of his predecessor; but the successor of a parson is generally ascertained by the will of some other person being exercised, and till the person entitled to appoint a parson has named one, and he has been duly instituted, the lands of the church have no legal owner, unless the lord is the owner. This seignory may be worth nothing, but it still exists. The difficulty may indeed be solved without the supposition of a seignory still existing, and in the following manner. There is succession in the case of one parson succeeding another, for which the notion of a corporation is not necessary. The notion of succession is this: the right which is the object of the succession, continues the same; the subject, that is the person, changes. In order to constitute strict succession, the new ownership or right must begin at the moment when the former ceases, and the new ownership or right is derived from and founded on a former ownership or right. This is the case of succession to the crown, and also of the heir-at-law succeeding to real property. In the case of a parson, when a new one is appointed, his right by a fiction at law commences

at the time when his predecessor's right ceased, though an interval has elapsed between the time of his predecessor's death and his own appointment; and this was the doctrine which the Romans applied to the case of a heres who did not take possession of the hereditas till some time after the death of the testator or intestate. This subject is discussed by Savigny, *System des Römischen Rechts*, &c., vol. iii. When then the parson dies, the freehold may, according to this doctrine, be considered to be in abeyance till the appointment of his successor, one of the few instances in the English law in which it is said that a freehold estate can be in abeyance.

No seignory, in the sense above explained, can now be created except by the king. It was enacted by the statute *Quia Emptores* (18 Edw. I. c. 1), that all feoffments of land in fee simple must be so made that the feoffee must hold of the chief, that is, the immediate lord of the aliening tenant, by the same services by which the tenant held. All seignories exist now which existed at the time when the statute of *Quia Emptores* was passed. A lord may release the services to a tenant; but it would be consistent that the king could not release the services due to him, for if that were the case land might become allodial, and on the death of a person without heirs there might be land without an owner, which is inconsistent with the fundamental principles of law relating to English land. Still it is said that the king can release to his tenant all services, and yet that the tenant holds of him. By this assumption of a still subsisting tenure the consequence above mentioned is avoided.

Tenure of an imperfect kind may be created at present. Wherever a particular estate is created, it is held of the reversioner by an imperfect tenure: this is the common case of landlord and tenant. If no rent or other services are reserved from the tenant of the particular estate for life or years, the tenure is by fealty only, and he may be required to take the oath of fealty. But the right of the reversioner to whom services are due is solely incident to the reversion, and is created at the same time with it.

The perfect tenure originated in the pure feudal system, in which the seignory of the lord was the legal ownership of the land, and the tenant owed his services for the enjoyment of it. The only perfect tenure now existing is Socage tenure, the services of which are certain, and consist, besides fealty, of some certain annual rent. [SOCAGE.]

The right of wardship was one of the incidents to military tenures. The lord had a right to the wardship of his infant tenant until he was twenty-one years of age; and this right was in many respects prejudicial to the interests of the heir. This right was abolished with the abolition of military tenures. The right of guardianship to an infant tenant in socage only continues to the age of fourteen; but the act of Charles II. (12, c. 24) gave a father power by deed or will, executed as the statute prescribes, to appoint a guardian to any of his children till their full age of twenty-one, or for any less time. (See 1 Vict. c. 26.) The guardian in socage was the next of kin to the heir, and he was chosen from that line, whether paternal or maternal, from which the lands had not descended to the heir, and consequently such guardian could never be the heir of the infant. This wardship then had no relation to tenure.

If the services due in respect of a perfect tenure are not rendered by the tenant to the lord, he may distrain, that is, take any chattels that are on the land in respect of which the services are due; and an imperfect tenure so far resembles a perfect one, that a reversioner can distrain for the services due from the tenant of the particular estate.

A right still incident to a seignory such as a subject may have is that of escheat, which happens when the tenant in fee simple dies without leaving any heir to the land, and without having incurred any forfeiture to the crown, as for treason. Such a right exists by virtue of a seignory created before the statute of Quia Emptores. It has been observed that the acquisition by escheat is not a purchase, because the escheated land descends as the seignory would have descended. Forfeiture is another right

incident to a seignory, and it may happen in consequence of any act by which the tenant breaks his fidelity (fealty) to his lord of whom he holds. It therefore extends to other cases than treason and felony. This subject is explained under FORFEITURE, and TENANT AND LANDLORD. When lands are forfeited to the king for treason, or to the lord for felony, the tenure is extinguished; and generally, in whatever way lands come to the king or lord, the tenure is of necessity extinguished. If lands escheat to the king, he may grant them again in fee simple.

The nature of tenure will be better understood by consulting the following articles: COPYHOLD; FEUDAL SYSTEM; MANOR; RENT.

TERM. The law Terms are those portions of the year during which the courts of common law sit for the despatch of business. They are four in number, and are called Hilary Term, Easter Term, Trinity Term, and Michaelmas Term: they take their names from those festivals of the Church which immediately precede the commencement of each. Various acts of parliament have been passed relative to the regulation of the Terms. The statute which now determines them is the 11 Geo. IV. & 1 Wm. IV. c. 70, amended by 1 Wm. IV. c. 3, which enacts that Hilary Term shall begin on the 11th and end on the 31st of January; Easter begin on the 15th of April and end on the 8th of May; Trinity begin on the 22nd of May and end on the 12th of June; Michaelmas begin on the 2nd and end on the 25th of November. Monday is in all cases substituted for Sunday when the first day of Term falls on Sunday. During Term four judges sit in each court, and are occupied in deciding pure matters of law only, without the intervention of a jury. The fifth judge in each court sometimes sits alone to determine matters of smaller importance or to try causes at Nisi Prius. By the statute 1 & 2 Vict. c. 32, the courts of common law are empowered, upon giving notice, to hold sittings out of Term for the purpose of disposing of the business then pending and undecided before them. These sittings are conducted

in the same manner as those during the Term, except that no new business is introduced. The period during which they have the power to do this is restricted to "such times as are now by law appointed for holding sittings at Nisi Prius in London and Westminster." These times are appointed by 1 Wm. IV. c. 70, s. 7, and consist of "not more than twenty-four days, exclusive of Sundays, after any Hilary, Trinity, and Michaelmas Term, not more than six days, exclusive of Sundays, after any Easter Term, to be reckoned consecutively after such Terms." The judges are also empowered by the same section to appoint such day or days as they shall think fit for any trial at bar (that is, a trial before four judges of the court), and the time so appointed, if in vacation, is for the purposes of the trial to be deemed a part of the preceding Term.

There is also a provision which enables the judges, with the consent of the parties, to appoint any time not within the twenty-four days for the trial of any cause at Nisi Prius. The sittings during these twenty-four and six days are called the sittings after Term, and are held for the trials of causes at Nisi Prius for London and Westminster, which places do not form part of any of the circuits. Sittings at Nisi Prius are also held for the same purpose before single judges during Term time, but no special jury cases are taken within the Term. (Spelman, *Of the Terms*; 3 Blackstone's *Com.*, 275.)

TERM OF YEARS signifies the estate and interest which pass to the person to whom an estate for years is granted by the owner of the fee. [ESTATE.]

TERRIER, from the French word *terrier*, a land-book, a register or survey of lands. Those best known in this country are the ecclesiastical terriers made under the provisions of the 8th canon. They consist of a detail of the temporal possessions of the church in the parish. They ought to be signed by the parson, and are sometimes also signed by the churchwardens and some of the substantial inhabitants of the parish. Their proper place of custody is the bishop's or archdeacon's registry: a copy also is fre-

quently placed in the parish chest. If a terrier is proved to be produced from the proper custody, and therefore may be presumed to be genuine, it is in all instances evidence against the parson. In those instances where it has been signed by churchwardens elected by the parish or by the inhabitants, it is also evidence against the inhabitants generally; even against those occupying lands other than the lands occupied by the inhabitants who signed it. The questions in respect of which a terrier is generally employed as evidence are those relating to the glebe, tithes, a modus, &c. (Starkie, *On Evidence*.)

TEST ACT. [ESTABLISHED CHURCH; NONCONFORMITY.]

TESTAMENT. [WILL.]

TESTE OF A WRIT. [WRIT.]

TESTIMONY. [EVIDENCE.]

THEATRE. Before the reign of Elizabeth theatrical representations appear to have been subject to no legal restraint beyond the liability of those who conducted them to the vagrant laws.

But, although players, as such, were subject to no general legal restrictions, it is probable that the practice of granting licences from the crown to such persons prevailed as early as the reign of Henry VIII. The earliest theatrical licence from the crown now extant is that granted by Queen Elizabeth, in 1574, to James Burbage and four other persons, "servants to the Earl of Leicester," which contains a proviso that the performances thereby authorized, before they are publicly represented, shall be seen and allowed by the queen's master of the revels; a stipulation analogous to the licence of the lord chamberlain under the Licensing Act at the present day. These licences from the crown were originally nothing more than authorities to itinerate, which exempted strolling players from being molested by proceedings taken under the laws or proclamations against vagrants, and also superseded the necessity of licences from local magistrates.

Although theatrical representations became much more general in the reigns of James I. and Charles I., no laws were enacted for their regulation, with the exception of the stat. 1 Car. I. c. 1, which

suppressed the performance of "interludes and common plays" upon the Lord's Day. An ordinance of the Long Parliament, in 1648, was directed to the suppression of all stage-plays and interludes, but though occasionally enforced with much rigour, it failed to abolish these entertainments. The stat. 12 Ann. stat. 2, c. 23, in general terms, classed players of interludes as rogues and vagabonds: but the stat. 10 Geo. II., c. 28, s. 1, expounded the former statute, by enacting that "every person, who should for hire, gain, or reward, act, represent, or perform any play or other entertainment of the stage, or any part therein, if he shall not have any legal settlement where the offence should be committed, without authority by patent from the king, or licence from the lord chamberlain, should be deemed a rogue and vagabond within the stat. 12 Ann." This provision is now repealed by the stat. 5 Geo. IV. c. 83, and players as such, whether stationary or itinerant, are, at the present day, not amenable to the law as rogues and vagabonds. By the 2nd section of the above statute, 10 Geo. II. c. 28, which, with the exceptions just mentioned, is still in full operation, and forms the law of the metropolitan theatres, it is enacted generally, that "every person who shall, without a patent or licence, act or perform any entertainment of the stage for hire, gain, or reward, shall forfeit the sum of 50*l*." By the 3rd section it is declared, that "no person shall for hire, gain, or reward act, perform, or represent any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any parts therein; or any new act, scene, or other part added to any old interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any new prologue or epilogue, unless a true copy thereof be sent to the lord chamberlain of the king's household for the time being, fourteen days at the least before the acting, representing, or performing thereof, together with an account of the play-house or place where the same shall be, and the time when the same is first intended to be first acted, represented, or performed, signed by the master or manager." The 4th section authorizes the

lord chamberlain to prohibit the performance of any theatrical entertainment, and subjects the persons infringing this prohibition to a penalty of 50*l*., and the forfeiture of their patent or licence. The 5th section provides that "no person shall be authorized by patent from the crown, or licence from the lord chamberlain, to act, represent, or perform for hire or reward, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, in any part of Great Britain, except in the city of Westminster and within the liberties thereof, and in such places where the king shall personally reside, and during such residence only." The 7th section enacts, that "if any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the stage, or any act, scene, or part thereof, shall be acted, represented, or performed in any house or place where wine, ale, beer, or other liquors shall be sold or retailed, the same shall be deemed to be acted, represented, and performed for gain, hire, and reward." Within a few years after the passing of this act of parliament, the clause which restricted the power of granting patents by the crown to theatres within the city of Westminster and places of royal residence, was found to be productive of inconvenience; and special acts of parliament were passed, which exempted several large towns, in which such entertainments were desired, from the operation of that clause, and authorized the king to grant letters for establishing theatres in such places. Instances of statutes of this kind occur with respect to Bath, in stat. 8 Geo. III. c. 10; with respect to Liverpool, in the stat. 11 Geo. III. c. 16; and with respect to Bristol, in the stat. 18 Geo. III. c. 8.

A further relaxation of the rule established by the stat. 10 Geo. II. c. 28, for the regulation of theatrical performances, was effected by the statute 28 Geo. III. c. 30, in favour of places which could not be expected to bear the expense of a special act of parliament. By this latter statute, the justices of the peace at general or quarter sessions are authorized to license the performance of any such tragedies, comedies, interludes, operas, plays, or farces as are represented at the patent

or licensed theatres in Westminster, or as have been submitted to the Lord Chamberlain, at any place within their jurisdiction not within 20 miles of London, Westminster, or Edinburgh, or 8 miles of any patent or licensed theatre, or 10 miles of the king's residence, or 14 miles of either of the universities of Oxford or Cambridge, or 2 miles of the outward limits of any place having peculiar jurisdiction.

These acts have been wholly or partially repealed, except as to licences already granted, and theatres are now regulated by 6 & 7 Vict. c. 68, which provides that no person shall keep open any place for the public performance of stage-plays without the authority of letters-patent, or a licence from the Lord Chamberlain, or the justices of the peace, under a penalty of a sum not exceeding 20*l.* for every day such house shall have been kept open without licence. The Lord Chamberlain is to have authority to grant licences to theatres within the parliamentary boundaries of London and Westminster, and the boroughs of Finsbury, Marylebone, the Tower Hamlets, Lambeth, and Southwark; also within New Windsor and Brighton, and wherever her Majesty may occasionally reside; but no licence to be granted within Oxford or Cambridge, or within fourteen miles of the same, without the consent of the chancellors or vice-chancellors of the same. For every such licence a fee is to be paid to the Lord Chamberlain, to be fixed by himself, according to a scale, but not to exceed 10*s.* for each calendar month during which the theatre is licensed to continue open: elsewhere the justices to grant licences. The licence to be granted to the actual manager, whose name and abode shall be printed on every play-bill, and who shall become bound, in not exceeding 500*l.* with two sureties not exceeding 100*l.* each, for observance of the rules in force, and for payment of penalties. Persons performing for hire in any *unlicensed theatre*, to forfeit, at the discretion of the justices, a sum not exceeding 5*l.* for every day on which they offend. No additions to old plays, or alterations of

epilogue or prologue, can be represented without the Lord Chamberlain's approval.

TITHES are the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, and are offerings payable to the church, by law. Under the Jewish system, the tenth part of the yearly increase of their goods was due to the priests. (*Numbers* xviii. 21; *Deut.* xiv. 22; *Levit.* xxvii. 30. 32.)

In the earliest ages of the Christian church, offerings were made by its members at the altar, at collections, and in other ways; and such payments were enjoined by decrees of the church, and sanctioned by general usage. For many centuries, however, they were voluntary. But when the church had increased in power, and began to number amongst its members many who adhered to it because it was the prevailing religion, it was found necessary to enforce certain fixed contributions for the support of the ministers of religion. The church relied upon the example of the Jews, and claimed a tenth. Meanwhile, the conversion of temporal princes to Christianity, and their zeal in favour of their new faith, enabled the church to obtain the enactment of laws to compel the payment of tithes. In England, the first instance of a law for the offering of tithes was that of Offa, king of Mercia, towards the end of the eighth century. He first gave the church a civil right in tithes, and enabled the clergy to recover them as their legal due. The law of Offa was at a later period extended to the whole of England by King Ethelwulf. (*Prideaux, On Tithes*, 167.)

At first, though every man was obliged to pay tithes, the particular church or monastery to which they should be paid appears to have been left to his own option. In the year 1200, however, Pope Innocent III. directed a decretal epistle to the archbishop of Canterbury, in which he enjoined the payment of tithes to the parsons of the respective parishes. This parochial appropriation of tithes has ever since been the law of England. (*Coke*, 2 *Inst.*, c. 41.)

The tithes thus payable were of three kinds—*prædial*, *mixed*, and *personal*. *Prædial* tithes are such as arise immediately from the ground, as grain of all sorts, fruits, and herbs. *Mixed* tithes arise from things nourished by the earth, as colts, calves, pigs, lambs, chickens, milk, cheese, and eggs. *Personal* tithes are paid from the profits arising from the labour and industry of men engaged in trades or other occupations; being the tenth part of the clear gain, after deducting all charges. (Watson, *On Tithes*, c. 49.) It is sometimes stated that personal tithes seem to have been generally commuted for the more moderate tribute of Easter Offerings; unless in fishing-towns, or other places where peculiar circumstances have caused a continuance of the primitive usages. (Burton, *Compend. of the Law of Real Property*, § 1173.)

Tithes are further divided into *great* and *small*. The great tithes consist of corn, hay, wood, &c.; the small tithes consist of the *prædial* tithes of other kinds, together with mixed and personal tithes. This distinction is arbitrary, and not dependent upon the relative value of the different kinds of tithe within a particular parish. Potatoes, for instance, grown in fields, have been adjudged to be small tithes, in whatever quantities planted (Smith v. Wyatt, 2 Atk., 364), while corn and hay in the smallest portions still continue to be treated as great tithes. The distinction is of material consequence, as great tithes belong, of right, to the rector of the parish, and small tithes to the vicar.

No tithes are paid for quarries or mines, because their products are not the increase, but are part of the substance of the earth. There may, however, be tithes of minerals by custom. Neither are houses, considered separately from the soil, chargeable, as having no annual increase. By the common law of England no tithe is due for wild animals such as fish, game, &c.; but there are local customs by which tithe has been paid from such things from time immemorial, and in those places such customary tithes may be exacted. Tame animals, kept for pleasure or curiosity, are also exempt from tithes.

Tithes were originally paid in kind, that is, the tenth wheat-sheaf, the tenth lamb or pig, as the case might be, belonged to the parson of the parish as his tithe. The inconvenience and vexation of such a mode of payment are obvious, but no attempt had been made in this country, till very recently, to introduce a general improvement in the mode of collection. The inconvenience of paying tithes in kind must long since have been felt, and certain modes of obviating it were occasionally practised. Sometimes the owner of land would enter into a composition with the parson or vicar, with the consent of the ordinary and the patron of the living, by which certain land should be altogether discharged from tithes, on conveying other land for the use of the church, or making compensation. In other words, the owner of the land purchased an exemption from tithes. Such arrangements between landowners and the church were recognised by law; but it was found that they were often injurious to the church by reason of an insufficient value being given for the tithes. The acts 1 Elizabeth, c. 19, and 13 Elizabeth, c. 10, were accordingly passed, which disabled archbishops, bishops, colleges, deans, chapters, hospitals, parsons, and vicars, from making any alienation of their property for a longer term than twenty-one years or three lives. In order to establish an exemption from tithes on the ground of a real composition, it is therefore necessary to show that such composition had been entered into before the statutes of Elizabeth. Since that time compositions have rarely been made, except under the authority of private acts of parliament.

Another method of avoiding the payment of tithes in kind was by a *modus decimandi*, commonly called a *modus*. This consists of any custom in a particular place, by which the ordinary mode of collecting tithes has been superseded by some special manner of tithing. In some parishes the custom has prevailed, time out of mind, of paying a certain sum of money annually for every acre of land, in lieu of tithes. In others, a smaller quantity of produce is given, and the residue is made up in labour, as every 12th sheaf of wheat instead of the 10th,

but to be housed or threshed by the tithe-payer.

A large portion of the land of England and Wales is tithe-free from various causes. Some has been exempted under real composition, as already explained, and some by prescription, which supposes a composition to have been formerly made. The most frequent ground of exemption is that the land once belonged to a religious house, and was therefore discharged in following manner:—All abbots, priors, and other heads of religious houses, originally paid tithes from the lands belonging to them, until Pope Paschal II. exempted all spiritual persons from paying tithes of lands which were in their own hands. This general discharge continued till the time of King Henry II., when Pope Adrian IV. restrained it to the three religious orders of Cistercians, Templars, and Hospitalers, to whom Pope Innocent III. added the Præmonstratenses. These four orders, on account of their exemption, were commonly called the privileged orders. The Council of Lateran, in 1215, further restrained this exemption to lands in the occupation of those religious orders of which they were in possession before that council. Bulls were, however, obtained for discharging particular monasteries from the payment of tithes, which would not otherwise have been exempt; by which means much land has been ever since tithe-free. Another mode by which lands belonging to religious houses became not liable to the payment of tithes was that of *unity of possession*; as where the lands and the rectory belonged to the same establishment, which would not, of course, pay tithes to itself. Yet the lands were not absolutely discharged by this unity of possession, for, upon any disunion, the payment of tithes was revived; so that the union only suspended the payment. The act 31 Hen. VIII. c. 13, which dissolved several of the religious houses, continued the discharge of their lands from tithes, though in the possession of the king or any other person by grant from the crown; and, in consequence of this, the lands of many laymen which were granted by the crown are tithe-free, and the right to

tithe and the property in many rectories are vested in laymen. Many monasteries had previously been dissolved by act of parliament, but as no such clause as that contained in the 31 Hen. VIII. had been introduced into other acts, the lands of the monasteries dissolved by them became chargeable with tithes.

We have stated enough concerning the nature of tithes and the various circumstances affecting them, to show how complicated must be the laws, and how entangled the interests of different parties who had to pay or to receive them. The payment of tithes in kind has been a cause of constant dispute between clergymen and their parishioners. With the best intentions on both sides, the very nature of tithes is such, that doubts and difficulties must arise between them; and even where there is no doubt, the form and principle of payment are odious and discouraging. The hardships and injustice of tithes upon the agriculturist are well described by Dr. Paley:—"Agriculture is discouraged by every constitution of landed property which lets in those who have no concern in the improvement to a participation of the profit; of all institutions which are in this way adverse to cultivation and improvement, none is so noxious as that of tithes. A claimant here enters into the produce who contributed no assistance whatever to the production. When years perhaps of care and toil have matured an improvement; when the husbandman sees new crops ripening to his skill and industry; the moment he is ready to put his sickle to the grain, he finds himself compelled to divide his harvest with a stranger." (*Moral and Political Philosophy*, chapter xii.)

If tithes then be in principle an injurious and restrictive tax upon agriculture, and if the mode of collection be vexatious, it became the duty of a legislature to provide a remedy for these evils. But tithes are unlike any other tax, which being found injurious to the state, may be removed on providing others. They are not the property of the state: they are payable not only to spiritual persons, but to lay impropriators; they have been the subject of innumerable private bargains;

land has been sold at a higher price on account of its exemption from tithe; the value of the patronage of the greater portion of the livings of this country is dependent upon the existing liability of land to tithes; in short, the various relations of society have been for centuries so closely connected with the receipt and payment of tithes, that to have abolished them would have been injustice to many, and no advantage to the community; for the whole profit would immediately have been enjoyed by those whose lands were discharged from payments to which they had always been liable, and subject to which they had most probably been purchased.

As for these reasons the extinction of tithes was impracticable, a commutation of them has been attempted and has been found most successful. Dr. Paley, who saw so clearly the evils of tithes, himself suggested this improvement. "No measure of such extensive concern appears to me so practicable, nor any single alteration so beneficial, as the conversion of tithes into *corn-rents*. This commutation, I am convinced, might be so adjusted as to secure to the tithe-holder a complete and perpetual equivalent for his interest, and to leave to industry its full operation and entire reward." (*Moral and Political Philosophy*, chapter xii.) This principle of commutation was first proposed to be applied by the legislature to Ireland. In addition to the common evils of a tithe system, that country was labouring under another. The mass of the people, who are Roman Catholics, were paying tithes to a Protestant clergy. Resistance to the payment of tithes had become so general that a commutation was deemed absolutely necessary for the safety of the church of Ireland. It was recommended by committees of both houses of parliament in 1832, but not finally carried into effect until 1838.

The statutes for the general commutation of tithes in England are the 6 & 7 Will. IV. c. 71, the 7 Will. IV. and 1 Vict. c. 69, the 1 & 2 Vict. c. 64, the 2 & 3 Vict. c. 32, and the 5 & 6 Vict. c. 54. Their object is to substitute a rent-charge, payable in money, but in amount varying according to the average price of

corn for seven preceding years, for all tithes, whether payable under a *modus* or composition, or not. A voluntary agreement between the owners of the land and of the tithes was first promoted, and in case of no such agreement, a compulsory commutation was to be effected by commissioners. In case of dispute, provision was made for the valuation and apportionment of tithe in every parish. The rent-charge was to be thus calculated: the comptroller of corn returns is required to publish in January the average price of an imperial bushel of British wheat, barley, and oats, computed from the weekly averages of the corn returns during seven preceding years. Every rent-charge is to be of the value of such number of imperial bushels and decimal parts of an imperial bushel of wheat, barley, and oats, as the same would have purchased at the prices so ascertained and published, in case one-third of such rent-charge had been invested in the purchase of wheat, one-third in barley, and the remainder in oats. For example, suppose the value of the tithe of a parish to have been settled by agreement or by award at 300*l.*, and that the average price of wheat for the seven preceding years had been 10*s.* a bushel, of barley 5*s.*, and of oats 2*s.* 6*d.*; the 300*l.* would then represent 200 bushels of wheat, 400 bushels of barley, and 800 bushels of oats. However much the average prices of corn may fluctuate in future years, a sum equal in value to the same number of bushels of each description of corn, according to such average prices, will be payable to the tithe-owner, and not an unvarying sum of 300*l.* The quantity of corn is fixed, but the money payment to the tithe-owner varies with the septennial average price of corn. Land not exceeding 20 acres may also be given by a parish, on account of any spiritual benefice or dignity, as a commutation for tithes to ecclesiastical persons, but not to lay impropriators. (6 & 7 Will. IV. c. 71, s. 26-28.)

By the Report in 1845 of the tithe commissioners, it appears that already voluntary proceedings have commenced in 9594 tithe districts; 6964 agreements have been received, of which 6816 have been confirmed; 4545 notices for making



awards have been issued: 3324 drafts of compulsory awards have been received, of which 2821 have been confirmed; 8338 apportionments have been received, of which 7919 have been confirmed. Of the whole business of assigning rent-charges and apportioning them, about half is completed.

The complete and final commutation of tithes must be regarded as a most valuable measure. It is perfectly fair to all parties, and is calculated to add security and permanence to the property of the church, and to remove all grounds of discord and jealousy between the clergy and their parishioners. Nor must we omit to mention an improvement in the mode of recovering tithes, consequent upon the commutation. There were formerly various modes of recovery, in the ecclesiastical as well as in the civil courts, and before justices of the peace, all more or less leading to unseemly litigation. The present mode of recovering the rent-charge, if in arrear, is by distraining for it upon the tenant or occupier, in the same manner as a landlord recovers his rent: and if the rent-charge shall have been forty days in arrear, possession of the land may be given to the owner of the rent-charge until the arrears and costs are satisfied. Indeed, the whole principle of the Tithe Commutation Acts is to strip tithes of the character of a tax, and to assimilate them as much as possible to a rent-charge upon the land.

#### TITHING. [SHIRE.]

**TITLES OF HONOUR** are designations which certain persons are entitled to claim in consequence of possessing certain dignities or stations. They vary in a manner corresponding to the variety of the dignities. Thus Emperor, King, Czar, Prince, are titles of honour, and the possessors of these dignities are, by common consent, entitled to be so denominated, and to be addressed by such terms as Your Majesty and Your Royal Highness. These are the terms used in England, and the phrases in use in other countries of Europe do not much differ from them.

The five orders of nobility in England are distinguished by the respective titles of Duke, Marquis, Earl, Viscount, and

Baron: and the persons in whom the dignity of the peerage inheres are entitled to be designated by these words; and if in any legal proceedings they should be otherwise designated, there would be a misnomer by which the proceedings would be vitiated, just as when a private person is wrongly described in an indictment; that is, the law or the custom of the realm guarantees to them the possession of these terms of honour, as it does of the dignities to which they correspond.

The orders of nobility in other European countries differ little from our own. They have their Dukes, Marquises, Counts, Viscounts, and Barons.

Another dignity which brings with it the right to a title of honour is that of knighthood. [KNIGHT.] The Baronet, which is a new dignity, originated in the reign of James I. [BARONET.]

Besides these, there are the ecclesiastical dignities of Bishop and Archbishop, which bring with them the right to certain titles of honour besides the phrases by which the dignity itself is designated. And custom seems to have sanctioned the claim of the persons who possess inferior dignities in the church to certain honourable titles, and it is usual to bestow on all persons who are admitted into the clerical order the title of Reverend, a title which was formerly given to others quite as appropriately, to judges for instance.

There are also academical distinctions which are of the nature of titles of honour, although they are not usually considered to fall under the denomination. Municipal offices have also titles accompanying them; and in the law there are eminent offices the names of which become titles of honour to the possessors of them, and which bring with them the right to certain terms of distinction.

All titles of honour appear to have been originally names of office. The earl in England had in former ages substantial duties to perform in his county, as the sheriff (the Vice-Comes or Vice-Earl) has now; but the name has remained now that the peculiar duties are gone, and so it is with respect to other dignities.

Some of these dignities and the titles correspondent to them are hereditary. So were the eminent offices which they

designate in the remote ages, when there were duties to be performed. Hence hereditary titles.

The distinction which the possession of titles of honour gives in society has always made them objects of ambition. Such titles exist even in democratical states, as in the United States of North America; but they are only temporary and annexed to certain offices, as that of President. The hereditary nature of most of the chief titles of honour in European states gives them a different character.

Whoever wishes to study this subject will do well to resort to two great works: one, the late 'Reports of the Lords' Committees on the dignity of the Peerage;' the other, the large treatise on 'Titles of Honour,' by the learned Selden. The latter was first printed in 4to., 1614; again, with large additions, folio, 1631.

**TOBACCO.** The tobacco duty yields a gross revenue of above 3,500,000*l.* a year; only two articles of foreign production, sugar and tea, bring in a larger sum. Since 1842 the duty has been 3*s.* per lb. The value of the article in bond varies from 2½*d.* to 6*d.* From 1815 to 1825 the duty was 4*s.* the lb. In 1825 it was reduced to 3*s.* the lb. and 2*s.* 9*d.* if it was the produce of the British possessions in America. In 1842 the duty was made 3*s.* also on tobacco produced in the British possessions in America. In 1786 the duty in Great Britain was only 10*d.* per lb.; but in the following year it was increased to 1*s.* 3*d.*; in 1796 to 1*s.* 7*d.*; and it was successively increased at different times until it amounted to 4*s.* in 1815.

For the following years the consumption of tobacco and the population for each decennial were:—

	Population.	Consumption.	Duty per lb.
1801	10,942,646	16,514,998 lbs.	1 <i>s.</i> 7 <i>d.</i>
1811	12,609,864	14,923,243	2 <i>s.</i> 2 <i>d.</i>
1821	14,391,631	12,983,198	4 <i>s.</i>
1831	16,539,318	15,350,018	3 <i>s.</i>
1841	18,335,786	16,000,000	3 <i>s.</i>

It appears that the consumption in 1841 was considerably less than one lb. per head: in Prussia it is three lbs. It is impossible to believe that the use of tobacco has declined, or even been station-

ary, within the last few years: there is little doubt indeed of its having increased, though the returns give a different result. In 1828 only 8600 lbs. of cigars paid duty at 18*s.* the lb.; in 1831, the duty having been reduced one-half, 66,000 lbs. were entered for consumption; and in 1841 there were entered 213,613 lbs. The following account shows the quantities of unmanufactured tobacco on which duty was paid in the United Kingdom in the three years and a half ending July, 1842:—

England, 1839, 15,686,245 lbs.; 1840, 15,475,431 lbs.; 1841, 14,590,129 lbs.; half-year ending 5th July, 1842, 7,189,166 lbs. Scotland, 1839, 2,082,469 lbs.; 1840, 2,071,350 lbs.; 1841, 2,031,982 lbs.; half-year ending 5th July, 1842, 2,575,022 lbs. Ireland, 1839, 692,702 lbs.; 1840, 5,355,617 lbs.; 1841, 5,473,479 lbs.; half-year ending 5th July, 1842, 2,663,522 lbs. United Kingdom, 1839, 22,971,406 lbs.; 1840, 22,902,398 lbs.; 1841, 22,695,588 lbs.; half-year ending 5th July, 1842, 10,827,710 lbs.

The following are the quantities retained for home consumption and the net amount of duty received in 1843 and 1844:—

	1843.	1844.
Unmanufactured tobacco	22,361,330 lbs.	23,547,934 lbs.
Manufactured, or cigars . .	248,514	256,078
Net amount of duty received	£3,325,265	£3,710,641

There is both smuggling and extensive adulteration of tobacco; an act was passed (5 & 6 Victoria, c. 93) intended to remedy one of the sources of loss to the revenue, by again subjecting the manufacturers and dealers to the supervision of the excise. Up to 1825 both a customs and excise duty was collected on tobacco; but since that year the duty has been wholly collected by the officers of the customs at the ports of importation. A strict survey of the manufacturers' premises, and a registry of their operations and the sales of the retail dealers, were still kept up by the excise, though they no longer collected any duty. This survey was at length abolished in 1840 by the 3 & 4 Vict. c. 18: it is now partially re-esta-

blished. The nature of the adulterations practised may be gathered from one of the clauses of the Act 5 & 6 Vict., which prohibits, under a penalty of 200*l.*, manufacturers having in their possession "any sugar, treacle, molasses, or honey, or any commings or roots of malt, or any ground or unground roasted grain, ground or unground chicory, lime, sand (not being tobacco sand), umbre, ochre, or other earths, sea-weed, ground or powdered, wood, moss, or weeds, or any leaves, or any herbs or plants (not being tobacco leaves or plants) respectively, nor any substance or material, syrup, liquid, or preparation, matter or thing, to be used or capable of being used as a substitute for or to increase the weight of tobacco or snuff."

#### TOLERATION ACT. [NONCONFORMITY.]

**TOLL**, from the Saxon "tolne;" in German, "zoll" (called in Law Latin "telonium," "theolonium," and "tolnetum," with many other variations, which may be seen in Ducange, all which Latin terms are derived apparently from *τελωνιον*, "collection of tribute or revenue"), is a payment in money or in kind, fixed in amount, made either under a royal grant, or under a prescriptive usage from which the existence of such a grant is implied, in consideration of some service rendered, benefit conferred, or right forborne to be exercised by the party who is entitled to such payment.

The owner of land may in general prevent others from crossing it either personally or with their cattle or goods, by bringing actions against trespassers, or distraining their cattle or goods. These remedies cannot be resorted to where the owner of the land has acquiesced in its being used as a public way; but in such case there may have been a royal grant, enabling the party to demand a reasonable compensation for the accommodation: this is toll-*traverse*.

Where a corporation, or the owner of particular lands, has immemorially repaired the streets or walls of a town, or a bridge, &c., and, in consideration of the obligation to repair, has immemorially received certain reasonable sums in respect of persons, cattle, or goods passing

through the town, such sums are recoverable at law by the name of toll-*thorough*.

An ancient toll may be claimed by the owner of a port in respect of goods shipped or landed there. Such tolls are port-tolls, more commonly called port-dues. The place at which these tolls were set or assessed was antiently called the Tolsey, where, as at the modern Exchange, the merchants usually assembled, and where commercial courts were held.

Another species of toll is a reasonable fixed sum payable by royal grant or prescription to the owner of a fair or market, from the buyer of tollable articles sold there. The benefit which forms the consideration of this toll is said to be the security afforded by the attestation of the sale by the owner of the fair or market, or his officers. It is not due unless the article be brought in bulk into the fair or market. Where, however, the proper and usual course has been to bring the bulk into the fair or market, the owner of the fair or market may maintain an action against a party who sells by sample, in order to deprive him of his toll. In some cases, by antient custom, a payment, called turn-toll, is demandable for beasts which are driven to the market and return unsold. The term toll is sometimes extended to the compensation paid for the use of the soil by those who erect stalls in the fair or market, or for the liberty of picking holes for the purpose of temporary erections; but the former payment is more properly called stallage, and the latter picage; and if the franchise of the fair or market, and the ownership of the soil on which it is held, come into different hands, the stallage and picage go to the owner of the soil, while the tolls, properly so called, are annexed to the franchise.

If tolls are wrongfully withheld, the party entitled may recover the amount by action as for debt, or upon an implied promise of payment; or he may seize and detain the whole or any part of the property in respect of which the toll is payable, by way of distress for such toll. If excessive toll be taken by the lord, or with his knowledge and consent, the franchise shall be seized: if without such consent, the officers shall pay double

damages and suffer imprisonment. (Stat. 3 Edw. I. c. 31.)

Grants of tolls were formerly of very ordinary occurrence. But it seems to be very probable that many antient payments of this description, though presumed, from their being so long acquiesced in, to have a lawful origin under a royal grant, were in fact mere encroachments. The evil was, however, practically lessened by the exertion of the royal prerogative of granting immunities and exemptions from liability to the payment of tolls, either in particular districts or throughout the realm; a prerogative exercised also by inferior lords who possessed *jura regalia*.

The term "toll" is used in modern acts of parliament to designate the payment directed to be made to the proprietors of canals and railways, the trustees of turnpike-roads or bridges, &c., in respect of the passage of passengers or the conveyance of cattle or goods.

The term toll is applied to the portion which an artificer is, by custom or agreement, allowed to retain out of the bulk in respect of services performed by him upon the article; as corn retained by a miller in payment of the mill-toll; also to the portion of mineral which the owner of the soil is entitled, by custom or by agreement, to take, without payment, out of the quantity brought to the surface, or, as it is technically called, *to grass*, and made merchantable, by the mining adventurer. To collect these dues the duke of Cornwall, and other great landholders in the mining districts of the west, have their officers, called "tollers."

TOLSEY. [TOLL.]

TONTINE, a species of life annuity, so called from Lorenzo Tonti, a Neapolitan, with whom the scheme originated, and who introduced it into France, where the first tontine was opened in 1653. The subscribers were divided into ten classes, according to their ages, or were allowed to appoint nominees, who were so divided, and a proportionate annuity being assigned to each class, those who lived longest had the benefit of their survivorship, by the whole annuity being divided amongst the diminished number. The terms of this tontine may be seen in

the French 'Encyclopédie' ('Finance' division, vol. iii., p. 704). In 1689 a second tontine was opened in France. The last survivor was a widow, who, at the period of her death, at the age of 96, enjoyed an income of 73,500 livres for her original subscription of 300 livres. The last French tontine was opened in 1759. They had been found very onerous, and in 1763 the Council of State determined that this sort of financial operation should not be again adopted. Tontines have seldom been resorted to in England as a measure of finance. The last for which the government opened subscriptions was in 1789. The terms may be seen in Hamilton's 'Hist. Public Revenue, p. 216. There have been numerous private tontines in this country.

TORTURE, in a legal sense, means the application of bodily pain in order to force discoveries from witnesses, or confessions from persons accused of crimes. Torture was applied to slaves at Athens (Demosthen., *Orat. adv. Pantanet.*); and Cicero states that the Athenian and Rhodian laws allowed it to be applied even to citizens and freemen (*Oratorie Partit.*, 34); but there is some doubt as to the accuracy of this statement with respect to Athenian freemen. Cicero speaks of torture as an ancient Roman practice, and attributes it to the customs of an earlier age ("moribus majorum"). (*Oratio pro Rege Deiotaro*, c. 1; *Pro Milone*, c. 22; *Orat. Partit.*, 34.) However this may have been, the use of torture in judicial inquiries had become fully established in the time of the early emperors. The Roman law allowed the torture as a general rule only in the case of slaves when examined either as witnesses or offenders. Rules for regulating the mode of applying torture, and limiting the occasions of its application, were early established. One of the most important of these is that which Cicero in the passages above cited refers to ancient usage, that a slave should not be tortured to give evidence against his master, except in the cases of incest (in the Roman sense) and conspiracy. Tacitus (*Annal.* ii. 30) says that in order to evade an old *senatus consultum* which prohibited the torture of a slave in order to get evidence which might affect the life or status of his

master, Tiberius invented the device of making over the slave from the accused to a public functionary, and then putting him to the torture against his former master. This device is however ascribed to Augustus. (Dion, lib. iv. 5.) In judicial inquiries, or trials for crimes, the "quæstio" was applied at the instance of the accuser in the presence of the prætor and judices, and the statements made under torture were reduced into writing (in tabulas relata), and signed by the prætor (Heineccius, *Ant. Rom.*, lib. iv. c. 18, sect. 25); but private persons also were permitted to extract evidence from their slaves by torture. (Cicero, *Orat. pro Cluentio*, cc. 63, 66; Quintilian, *Declam.*, 328, 338, 353.) At a later period of the Roman empire many new regulations were made, and the earlier restrictions upon this practice were removed or greatly modified. Several exceptions to the rule, which prohibited slaves from being tortured to give evidence that might affect the life or status of their master, were introduced, and even freemen were subjected to torture, when there was positive evidence of a crime, and probable or presumptive evidence that the accused was the guilty person. Moreover when the offence was of a grave character, and affected the Emperor immediately, personal exemptions from torture were not admitted. (Dig. 48, tit. 18, s. 10, *De Quæstionibus*.)

In Germany judicial torture was introduced as the Roman law became more established, and displaced the ancient Teutonic and feudal proceedings by ordeal and battle. Indeed while these *Judicia dei*, as they were called, continued in use, there is no notice of the existence of torture. In most German cities judicial torture was unknown until the end of the fourteenth century; although it appears in the statutes of the Italian municipalities at a much earlier period. (Mittermaier's *Deutsche Strafverfahren*, theil i. pp. 73, 394.) The regular torture, as derived from the Roman law, continued in many European states until the middle of the last century, when more enlightened views led to a general conviction of the inefficacy and injustice of this mode of ascertaining truth. In France the "ques-

tion préparatoire" was discontinued in 1780 by a remarkable decree, which is in Merlin's "*Répertoire*," vol. x. p. 502; and torture in general was abolished throughout the French dominions at the Revolution in 1789. In Russia its abolition, though recommended by the empress Catherine in 1763, was not effected until 1801. In Austria, Prussia, and Saxony it was suspended soon after the middle of the last century; but although so seldom used as to be practically extinct, torture was allowed by the law of Bavaria. Hanover, and some of the smaller states of Germany, within the last forty years. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 396, note.) In Scotland, the use of torture prevailed until the reign of Queen Anne, when it was declared by the act for improving the union of the two kingdoms (7 Anne, c. 21, s. 5), that in future "no person accused of any crime in Scotland shall be subject or liable to any torture."

It may be inferred from the case of the Templars in the reign of Edward II. (1310), as well as from the statement of Walter de Hemingford (p. 256), that torture was then unknown in England. Nevertheless, from the year 1468 until the Commonwealth, the practice of torture was frequent, and the particular instances are recorded in the council-books, and the torture-warrants in many cases are still in existence. The last instance on record occurred in 1640, when one Archer, a glover, who was supposed to have been concerned in the riotous attack upon Archbishop Laud's palace at Lambeth, "was racked in the Tower," as a contemporary letter states, "to make him confess his companions." A copy of the warrant under the privy seal, authorizing the torture in this case, is in the State Paper Office. With this instance the practice of torture in England ceased, no trace of its continuance being discernible during the Commonwealth or after the Restoration. But although the practice continued during the two centuries immediately before the Commonwealth, it was condemned as contrary to the law of England by judges and legal writers of the highest character who lived within that period, such as Fortescue, who con-

demns the practice in the strongest terms, though he does not expressly deny its existence in England (Fortescue, cap. 22); by Sir Thomas Smith, who wrote in the early part of Elizabeth's reign, and says that "torment or question, which is used by the order of the civil law and custom of other countries, is not used in England" (Smith, *Commonwealth of England*, book ii. cap. 27); and by Sir Edward Coke, who wrote in the reign of James I. (3 *Inst.* 35). Notwithstanding this denunciation of the practice as against law, both Smith and Coke repeatedly acted as commissioners for interrogating prisoners by torture (Jardine's *Reading on the Use of Torture in England*); and the latter, in a passage which occurs in the same book, and only a few pages before the words just cited (p. 25), impliedly admits that torture was used at examinations taken before trial, though it was not applied at the arraignment or before the judge. There is also a direct judicial opinion against the lawfulness of torture in England. In 1628 the judges unanimously resolved, in answer to a question propounded to them by the king in the case of Felton, who had stabbed the Duke of Buckingham, "that he ought not to be tortured by the rack, for no such punishment is known or allowed by our law." (Rushworth's *Collections*, vol. i. p. 638.) And yet several of the judges who joined in this resolution had themselves executed the warrants for torture when they held ministerial offices under the crown. Possibly the explanation of this inconsistency between the opinions of lawyers and the practice may be found in a distinction between prerogative and law, which was better understood two centuries ago than it is at the present day. It was true, as the above authorities declared, that torture was not part of the common law; in England no judge could direct the torture to be applied, and no party or prosecutor could demand it as a right. But that which was not lawful in the ordinary course of justice, was done under the prerogative of the crown, which authorized this mode of discovering crimes that affected the state, such as treason or sedition, and sometimes of offences of a grave character not political,—acting in this

respect independently of and even paramount to the common law. (*Rolls of Parliament*, 20 Edw. I., A.D. 1292.) This view of the subject is confirmed by the circumstance that in all instances of the application of torture in England, the warrants were issued immediately by the king, or by the privy council. The consequence was that in no country was torture so dangerous an instrument of power as in England. In other countries, where it was part of the system of trial, it was subject to rules and restrictions, fixed and determined by the same law which authorized the use of such an instrument, and those who transgressed them were liable to severe punishment. But in England there were no rules, no law beyond the will of the king. "The rack," says Selden, "is nowhere used as in England. In other countries it is used in judicature when there is a *semiplena probatio*, a half-proof against a man; then, to see if they can make it full, they rack him if he will not confess. But here in England they take a man and rack him,—I do not know why nor when,—not in time of judicature, but when somebody bids." (*Table-Talk*, "Trial.")

The particular modes of torture, by the rack or otherwise, are now mere objects of literary curiosity.

Although torture was to some extent practised under the Roman Law, Ulpian (48 tit. 18, s. 1, § 24) remarks that it is declared by the Imperial constitutions that we must not always give credit to it, nor yet always refuse credit to it, for it is a thing uncertain, dangerous, calculated to mislead. The opinions of eminent lawyers in England have been already cited; and the juridical writers of the Continent, in more recent times, have unanimously taken the same view of the subject. (Mittermaier's *Deutsche Strafverfahren*, theil i. p. 396.) There is a curious defence of torture in Wiseman's 'Law of Laws, or the excellence of the Civil Law,' p. 72.

TORY. This name has now, for about two hundred years, served to designate one of two principal political parties in this country. The name Tory, as well as the name Whig, and the existence of two parties in the state corresponding to

those which have now been known for a long time as Whig and Tory parties, date from the reign of Charles II. and from the year 1679.

The first Tories opposed the Exclusion Bill and supported Charles II. in his endeavour to prevent a renewal of the attack upon his brother, by successive prorogations of the parliament. The origin of the name is referred by Roger North, a very hot Tory, in a curious passage, to the connexion of the party with the Duke of York and his popish allies. (*Examen*. p. 321.) The origin of the word Whig, which is a little younger than Tory, is explained under WHIG.

Dr. Johnson gives an explanation of the word *Tory*, which is perhaps as good a short general description of the principles of Toryism as is to be given:—"One who adheres to the antient constitution of the state, and the apostolical hierarchy of the Church of England." Things as they have been, or, when some great change has taken place against the will of this party, things as they are,—the king before the aristocracy, and the aristocracy before the popular element in the constitution, which led the first Tories to argue from the divine right of kings for their exemption from parliamentary control, and for passive obedience, and which has afterwards directed their endeavours to contracting the suffrage so as to make the popular element as little popular as possible,—the freedom of the church from state control,—and the fullest possible amount of political privilege and honour for the church, as distinguished from every other religious denomination,—these have been the cardinal characteristics of Toryism, from the beginning to the present time.

During the reigns of Charles II. and James II. the support of the king brought the Tories into a connexion with the Roman Catholics, which was inconsistent with their High Church views; and they were involved in a continual difficulty of reconciling their persecution of Protestant dissenters, with the favour they desired to show the Roman Catholics, as political partisans. Lord Bolingbroke has given the following description of Toryism at this period:—"Divine, here-

ditary, indefeasible right, lineal succession, passive obedience, prerogative, non-resistance, slavery, nay, and sometimes popery too, were associated in many minds to the idea of a Tory, and deemed incommunicable and inconsistent in the same manner with the idea of a Whig." ('Dissertation on Parties,' *Miscellaneous Works*, vol. iii. p. 38, Edinburgh, 1773.) But popery was an accident to the creed of the party. The lengths to which James went for the Roman Catholic religion opened the eyes of the Tories; and the bulk of the party united with the Whigs in bringing about the revolution of 1688. The doctrines of divine right and passive obedience were then abandoned by the Tories in practice. During the reign of Anne they again raised their heads in argument, and the impolitic prosecution of Sacheverel gave force to their re-appearance. But from the Revolution down to the present time the struggle between the two parties, so far as it has been one of principle, has been a struggle by the Tories in behalf of the church, to invest it with political power and privileges, and against the increase of the power of the people in the state, through the House of Commons; and a struggle by the Whigs for the toleration of dissenters from the established religion, and for the strengthening of the popular element of the constitution.

TOURN. [LEET.]

TOWN, in its popular sense, is a large assemblage of adjoining or nearly adjoining houses, to which a market is usually incident. Formerly a wall seems to have been considered necessary to constitute a town; and the derivation of the word, in its Anglo-Saxon form 'tun,' is usually referred to the verb 'tīnan,' to shut or enclose; in its Dutch form 'tuyn,' it signifies a garden; and in its German form 'zaun,' it means a hedge. In legal language 'town' corresponds with the Norman 'vill,' by which latter term it is frequently spoken of in order to distinguish it from the word town in its popular sense. A vill or town is a subdivision of a county, as a parish is part or subdivision of a diocese; the vill, the civil district, being usually co-extensive with the parish, the ecclesiastical district

and, *primâ facie*, every parish is a vill, and every vill a parish. Many towns, however, not only in the popular, but in the legal sense of the term, contain several parishes; and many parishes, particularly in the north of England, where the parishes are exceedingly large, contain several vill, which vill are usually called tithings or townships. As until the contrary is shown the law presumes towns (or vill) and parishes to be co-extensive, Lord Coke goes so far as to say that it cannot be in law a vill unless it hath, or in times past hath had, a church, and celebration of divine service, sacraments, and burials. But this, for which no authority is given, appears to confound parish and vill, and to be inconsistent with the cases in which it has been held that a parish may consist of several vill. (1 Lord Raymond, 22.) The test proposed by Lord Holt is, that a vill must have a constable, and that otherwise the place is only a hamlet, an assemblage of houses having no specific legal character. Hence a vill is sometimes called a *constablewick*. Towns are divided into cities, boroughs, and upland towns, or (as we should now call them) country towns. Towns belonging to the last of these classes have been described as places which, though enclosed, are not governed, as cities and boroughs are, by their own elected officers. The Anglo-Saxon 'tun' terminates the names of a great number of places in England; and in the southern counties the farm *enclosure* in which the homestead stands is usually called the barton (*barn-town*), in Law Latin, *bertona*.

TOWN CLERK. [MUNICIPAL CORPORATIONS, p. 391.]

TOWNS, HEALTH OF. On the 14th of May, 1838, the Poor Law Commissioners presented to Lord John Russell, then Secretary of State for Home Affairs, a Report by Dr. Arnott and Dr. Kay, and two Reports by Dr. Southwood Smith, relative to the prevalence of disease among the labouring classes in certain districts of the metropolis. The House of Lords having on the 19th of August, 1839, presented an address to her Majesty requesting her to direct an inquiry to be made as to the extent of the causes of

disease stated in those Reports to prevail, the Poor Law Commissioners received a letter from Lord John Russell, in which he stated that her Majesty required them to make such inquiry, not only as to the metropolis, but as to other parts of England and Wales, and to prepare a Report stating the results of such inquiry.

In 1840 the subject was investigated by a Committee of the House of Commons, the result of which was a Report 'on the Health of Large Towns and Populous Districts.'

In July, 1842, the Report of the Poor Law Commissioners was presented to both Houses of Parliament, entitled a 'Report on the Sanitary Condition of the Labouring Population of Great Britain, with Appendices.' 'Local Reports on the Sanitary Condition of the Labouring Population of England,' were presented at the same time. Of these local Reports there are twenty-six, some of which relate to certain counties and others to particular towns. At the same time were presented 'Reports on the Sanitary Condition of the Labouring Population of Scotland.' In 1843 'a Supplementary Report on the results of a Special Inquiry into the practice of Interment in Towns,' was presented. On this subject see some remarks under INTERMENT.

On the 9th of May, 1843, Commissioners were appointed by the Queen for the purpose of "inquiring into the present state of large towns and populous districts in England and Wales, with reference to the causes of disease among the inhabitants, and into the best means of promoting and securing the public health, under the operation of the laws and regulations now in force, and the usages at present prevailing with regard to the drainage of lands, the erection, drainage, and ventilation of buildings, and the supply of water, in such towns and districts, whether for purposes of health, or for the better protection of property from fire; and how far the public health and the condition of the poorer classes of the people of this realm, and the salubrity and safety of their dwellings, may be promoted by the amendment of such laws, regulations, and usages."

The First Report of the Commissioners



was presented to both Houses of Parliament at the end of June, 1844. The Report is accompanied by 437 folio pages of evidence on which the Report is founded, an Appendix of Special Reports on the Sanitary Condition of several Towns, among the most important of which are Liverpool, by W. H. Duncan, M.D.; Ashton-under-Lyne, by John Ross Coulthart, Esq.; the City of York, by Thomas Laycock, M.D.; and Nottingham, by Thomas Hawksley, Esq.; besides other information on the Supply and Filtration of Water, on the Obstacles to Improvement in the Structure of Buildings, on the Cleansing of Streets and Houses, and on the application of Refuse.

The Second Report of the Commissioners was presented to Parliament in February, 1845. It treats briefly of the Causes of Disease, and at considerable length of Remedial Measures. It is followed by a Report on the State of Birmingham and other Towns, by R. A. Slaney, Esq.; a Report on the State of Bristol and other Towns, by Sir Henry T. De la Beche; a Report on the State of large Towns in Lancashire, by Dr. Lyon Playfair; and a Supplement containing information on sewers, lodging-houses, and other matters connected with inquiries of the Commissioners.

We have thus briefly stated the origin and progress of this important investigation into the sanitary condition of the population of Great Britain, chiefly indeed of the labouring and poorer inhabitants, but extending indirectly to all classes.

Other agencies for improving the physical condition of the labouring classes and of the poor are also at work. Among these is the "Health of Towns' Association," of which the Committee includes noblemen, dignitaries of the church, members of parliament, and other gentlemen. They have published a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies, delivered at Crosby-Hall, London, by William Augustus Guy, M.B., Physician to King's College Hospital;' a 'Lecture on the Unhealthiness of Towns, its Causes and Remedies, delivered Dec. 10, 1845, at the Mechanics' Institute at Plymouth, by Vis-

count Ebrington, M.P.;" and a 'Report of the Committee to the Members of the Association, on Lord Lincoln's Bill,' which was introduced into Parliament at the close of the session of 1845.

These important inquiries have proved by undeniable evidence, that the districts inhabited by the labouring classes, and often by tradesmen, in large towns, in many small towns, and in several parts of the country, are in a very noxious state from want of drainage, want of cleanliness, imperfect ventilation, deficiency of water, and density of population; the consequences of which are great frequency of sickness, and excessive destruction of human life. Typhus fever, cholera, consumption, scrofulous and other chronic complaints, mostly arising from causes which might have been prevented, are found to exist to an extent which it is painful to contemplate. The causes of sickness are generally most numerous and most intense in the crowded districts, and the mortality is found to be, with few exceptions, in proportion to the density of population. In the metropolis, for instance, the annual mortality is 3 per cent. in Whitechapel, but only 2 per cent. in St. George's, Hanover-Square. In the district of Bethnal-Green, 57 houses, on an average, contain 580 persons; and in some cases there are 30 persons in a single house.

Of fifty towns which were visited by direction of the Commissioners, only eight were found to be in a tolerable state as to drainage and cleansing; and as to the supply of water the reports were still more unfavourable.

The annual average mortality in England is 2·207 per cent., or 1 in 45. In healthy districts it is 2 per cent., or 1 in 50. In the metropolis the deaths are 1 in 39; in Birmingham and Leeds 1 in 37; in Sheffield, 1 in 33; in Bristol, 1 in 32; in Manchester, 1 in 30; in Liverpool, 1 in 29. In Brussels they have been found to be 1 in 24. The mortality is greater in Liverpool than in any other town in England. By the return made to the Town Council of Liverpool in 1841, by their surveyors, it appears that there were then 2398 courts, which contained a population of 68,345 persons. In these courts

1272 cellars were occupied by 6290 persons; of the number of cellars occupied in streets, 2848 were described as damp, and 240 as wet. The gentry in Liverpool live 35 years; the tradesmen 22; the working-class 15. The average of the whole town is only 17 years. By extracting from the mortuary registers of the metropolis for 1834, the ages at death of the gentry, the tradesmen, and the working classes, who died at the age of 15 and upwards, Mr. Guy ascertained that the gentry lived 59 years, the tradesmen 49, and the working-classes 48. In 1844 the deaths in the metropolis were 50,423. If the rate of mortality had been 1 in 50 instead of 1 in 39, the deaths would have been only 40,145, thus giving a saving of 10,278 lives in one year. From a Report of the Registrar-General it appears that out of every million of inhabitants 27,000 die every year in the large towns, and only 19,300 in the rural districts.

The large towns have already begun to make improvements. The improved drainage in twenty streets of Manchester has been found to diminish the annual number of deaths by more than 20 in every 110; and similar results of structural improvement have followed in other instances.

The loss of life, and the pecuniary charges consequent upon it to individuals and the community, are not the only considerations to be attended to. Not only the sickness which precedes death, but the sickness which is cured, render the sufferers incapable of following their usual occupations, and oblige them and their families to seek relief from the parish, and from public and private charity. It has been shown that pecuniary saving would result from sanitary improvements to such an amount as to justify the interference of the legislature, if it were only from motives of public economy.

The power vested in courts-leet by ancient usage is resorted to in a few towns for the abatement of minor nuisances. Mr. Coulthart gives a detailed description of the various matters which have been taken cognizance of by the leet-juries at Ashton-under-Lyne with beneficial effect. In most places, however, the ex-

ercise of these powers has fallen into desuetude, even where the courts still continue to be held.

The measures necessary to be adopted in order to improve the sanitary condition of large towns and populous districts are comprised under the following heads:—

1. Drainage, including house and street drainage, and the drainage of any place not covered with houses, yet influencing the health of the inhabitants.

2. The paving of streets, courts, and alleys.

3. Cleansing, comprising the removal of all refuse matter not carried off by drainage, and the removal of nuisances.

4. A sufficient supply of water for public purposes and domestic use.

5. The construction and ventilation of buildings in such a manner as to promote rather than injure the health of the inhabitants.

The Second Report of the Commissioners gives Thirty Recommendations to the legislature, each of which is preceded by the reasons on which the recommendation is founded. We can only afford space for a summary of these recommendations.

No. 1 recommends that in all cases the local administrative body shall have the special charge and direction of all works required for sanitary purposes, but that the crown shall possess a general power of supervision.

Nos. 2 to 11 relate to *Drainage*; surveys and plans; definition of area for drainage by the crown; appointment of surveyors; investigations by authority of the crown, on representations duly made; management of the drainage of the entire area by one body; purchase of rights of mill-owners and others; construction of sewers, branch sewers, and house-drains; rating of landlords when house is let in separate apartments, or when the rent is collected more frequently than once a quarter, or when the yearly rent is less than 10*l.*; providing of funds by the local administrative body, distribution of cost among the owners of the properties benefited, and charge of house-drains on owners of houses to which they belong; power to raise money, and provision

for gradual liquidation of debt incurred.

No. 12 recommends that the *Paving* be under the same management as the draining; but that it be performed by the local public officers.

Nos. 13, 14, and 15, relate to the *Cleansing* of all privies and cess-pools at proper times and on due notice; removal of large collections of dung; and abatement of nuisances arising from noxious exhalations from factories.

Nos. 17 to 21 relate to the supply of *Water*, in sufficient quantities not only for the domestic wants of the inhabitants, but also for cleansing the streets, scouring the sewers and drains, and the extinction of fires; purchase of the interests of water-companies, and placing the management of the supply of water under the local administrative body; the establishment of *public baths* and *wash-houses* for the poorer classes; and especially recommending that the supply of water in the mains be not only constant, but at as high a pressure as circumstances will permit.

Nos. 22 to 26 are regulations for *Buildings*, including power to raise money for the purchase of property, for the purpose of opening thoroughfares, and widening streets, courts, and alleys; prohibition of use of cellars as dwellings, except when they are of certain dimensions and properly ventilated; provision for building all new houses with proper privies, and for a good system of ventilation in all edifices for public assemblage and resort, especially school-houses.

Nos. 27 and 28 recommend that power be given to the local administrative body to compel landlords to cleanse houses, duly reported to be in a noxious state from filthiness—and that power be given to magistrates to license and issue rules for regulation of lodging-houses for the reception of vagrants, trampers, and persons of similar wayfaring habits.

No. 29 recommends the appointment of a medical officer in each town or district, who shall report periodically on the sanitary condition of such town or district.

No. 30 recommends the establishment of *Public Walks*, and that the local administrative body be empowered to raise 'be

necessary funds for the management and care of the walks when established.

A large portion of the 'Report of the Committee on Lord Lincoln's Bill,' before mentioned, is occupied with showing that the supply of water, wherever practicable, should be constant, not only in the main-pipes, but in the branch-pipes, thus doing away entirely with the use of water-butts; and contending that in most cases such a constant supply is not only practicable but economical, and that it would contribute in the highest degree to the cleanliness of houses in crowded districts, and consequently to the health of the inhabitants.

**TOWNSHIP.** This term is sometimes used to denote the inhabitants of a town in their collective capacity. In legal signification it is a vill forming part of a parish in cases where a parish has been divided for secular purposes into several vills or townships.

**TRADER.** [BANKRUPT.]

**TRANSLATION.** [BISHOP.]

**TRANSPORTATION** (*trans* and *por-*to), removal, banishment to some fixed place. Under **PUNISHMENT**, the general nature of punishment has been considered, and particularly of the punishment of death. Other punishments, such as transportation and imprisonment, will be briefly considered here. The object of this article is not to discuss fully so extensive a subject, but to indicate the various departments into which it may be distributed, which division will show the complicated character of that class of punishments commonly called Secondary Punishments, which comprise Transportation and Imprisonment, with all the particular punishments which are employed in connection with Transportation and Imprisonment.

A complete discussion of *Transportation* would include its origin as a mode of punishment: acts of parliament relating to it; the system under which it was carried into execution in the American colonies; system under which it was conducted in the early history of the Australian colonies; system on which it was recently executed in New South Wales and Van Diemen's Land—assignment; ticket of leave; chain-gangs and

road-parties; penal settlements; expense of the transportation system as hitherto enforced; contemplated changes in the convict discipline of the Australian penal colonies; system of transportation as enforced at Bermuda; theory of transportation.

Connected with this is the subject of *Hulks*—their origin, design, and history; description of a hulk; discipline of convicts in the hulks; employments; expense of the system.

Thirdly, *Prisons*—their state at the end of the last century, and the history of improvements in them since: the system of classification; the silent system—its theory and practical working; regulations of the prisons in which this system is in force; the labour imposed on the prisoners—the treadwheel, crank machine—expense of the silent system; the separate system—its theory and objections to it; its origin and history in England—principles of prison construction—employments of prisoners—expense of the system; prisons of England generally; treatment of untried prisoners; disposal of prisoners after their discharge; prisons for juvenile offenders—Parkhurst Reformatory.

Fourthly, Institutions in England auxiliary to those for punishment, or Houses of Reformation; Refuge for the Destitute, Philanthropic Institution.

Fifthly, Prisons in Scotland and Ireland, and in the British dependencies.

Sixthly, Capital Punishment; the various arguments for and against maintaining this punishment. [PUNISHMENT.]

Lastly, Progress of penal reform in foreign countries.

The statute of 39 Elizabeth, c. 4, for the banishment of dangerous rogues and vagabonds, was virtually converted by James I. into an act for transportation to America by a letter to the treasurer and council of the colony of Virginia, in the year 1619, commanding them "to send a hundred dissolute persons to Virginia, which the knight-marshal would deliver to them for that purpose." Transportation is not distinctly mentioned in any English statute prior to the stat. 18 Car. II. c. 3, which gives a power to the judges at their discretion either "to execute or

transport to America for life the mostroopers of Cumberland and Northumberland." Until after the passing of the stat. 4 Geo. I. c. 2, continued by stat. 6 Geo. I. c. 23, this mode of punishment was not brought into common operation. By these statutes the courts were allowed a discretionary power to order felons who were by law entitled to their clergy to be transported to the American plantations. Transportation to America under the statutes of George I. lasted from 1718 till the commencement of the War of Independence in 1775.

A plan for the establishment of penitentiaries, which was strongly recommended by Judge Blackstone, Mr. Eden, (afterwards Lord Auckland), and Mr. Howard, was taken into consideration by parliament, and the act 19 Geo. III. c. 74, for the erection of penitentiaries passed. The government failed, however, to adopt the necessary measures for its execution; and transportation was resumed by an act passed in the 24th year of George III., which empowered his majesty in council to appoint to what place beyond the seas, either within or without his majesty's dominions, offenders should be transported; and by two orders in council, dated 6th December, 1786, the eastern coast of Australia and the adjacent islands were fixed upon. In the month of May, 1787, the first band of convicts left England, which in the succeeding year founded the colony of New South Wales.

The present condition of a transported felon is mainly determined by the 5 Geo. IV. c. 84, the Transportation Act, which authorizes the king in council "to appoint any place or places beyond the seas, either within or without the British dominions," to which offenders shall be conveyed, the order for their removal being left to one of the principal secretaries of state. The places so appointed are the two Australian colonies of New South Wales and Van Diemen's Land; the small volcanic island called Norfolk Island, situated about 900 miles from the eastern shores of Australia; and Bermuda. The 5 Geo. IV. c. 84, gives to the governor of a penal colony a property in the services of a transported offender

for the period of his sentence, and authorizes him to assign over such offender to any other person. The 9 Geo. IV. c. 83, empowers the governor to grant a temporary or partial remission of sentence; and the 2 & 3 Wm. IV. c. 62, limits his power in this respect. In New South Wales and Van Diemen's Land convicts are subject to a variety of colonial laws, framed by the local legislatures established under the act 9 Geo. IV. c. 83. (*Lang's History of Transportation; Report of the Select Committee of the House of Commons on Transportation, 1838.*)

The various offences for which transportation is the penalty are mentioned in LAW, CRIMINAL.

Penal settlements are designed for the punishment of criminals convicted of very grave offences in the penal colonies, and of criminals who are specified in the instructions of the secretary of state forwarded to the governors of the colonies with every transport vessel. In connection with New South Wales, the penal settlement is Norfolk Island: in connection with Van Diemen's Land, there was formerly Macquarrie Harbour; at present there is Port Arthur.

Up to the year 1836, 100,000 convicts had been transported from this country to the Australian penal colonies, of whom 13,000 were women. The following estimate of the sums expended on account of those colonies falls short of the true amount:—

	£
Cost of the transport of convicts	2,729,790
Disbursements for general, convict, and colonial services	4,091,581
Military expenditure	1,632,302
Ordnance	29,846
Total from 1786 to 31st March, 1837	8,483,519
Deduct for premium on bills, coins, &c.	507,195
	7,976,324

The conveyance of each convict has thus cost about 28*l.*, and the various expenses of residence and punishment have been at least 54*l.* a head, making in all more than 82*l.* a head. The expense en-

tailed upon this country by the penal colonies has been, on the average since their commencement, 156,398*l.* a year; but a few years ago the annual expenditure was more than treble that amount.

The following was the expenditure of this country on account of New South Wales and Van Diemen's Land in the year 1836-7:—

<i>New South Wales.</i>		£
Ordinances of the army	.	46,801
Commissariat	.	3,450
Ordnance	.	12,014
Navy	.	4,641
Extraordinaries of the army	.	55,625
Special disbursements on account of convicts	.	127,949
		250,480
<i>Van Diemen's Land.</i>		£
Ordinances of the army	.	16,354
Commissariat	.	2,059
Ordnance	.	11,625
Navy	.	515
Extraordinaries of the army	.	20,867
Special disbursements on account of convicts	.	113,083
		164,503
Transport of convicts	.	73,030

Total expenditure for the year 1836-7 . . . . . 488,013  
(*Transportation Report.*)

In addition to this sum, the colonial expenditure on account of the administration of justice, gaols, and police was 90,000*l.*, an amount nine times as great in proportion to the population as that of the United Kingdom for similar purposes.

In 1837 a committee of the House of Commons was appointed to inquire into the subject of Transportation, and to suggest improvements. The labours of that committee have been followed by some changes, and there is a prospect of still greater.

All convicts sent to Bermuda are employed by the government on public works in the dockyards. The system of punishment pursued is essentially different from that which has been in force

in the Australian penal colonies, and closely resembles that adopted in the hulks in this country. The convicts sent to Bermuda are selected as being the best behaved; they are kept apart from the free population; they are shut up in hulks by night, and are worked in gangs by day under the superintendence of free overseers. A small amount of wages is paid to them for their labour, a portion of which they are allowed to spend, and the remainder forms a fund, which they receive on becoming free. At the expiration of their sentences they do not remain in Bermuda, but are sent back at the expense of the government of this country. Transportation to Bermuda, with some points of recommendation compared with transportation to the Australian colonies, is thus, on the other hand, without the argument in its favour, that it rids England of the criminals sent to it. (Capper's *Reports*.)

Mr. Bentham, Dr. Whately, the present archbishop of Dublin, and other writers on the theory of punishment, have condemned the general principle of transportation; and comparatively little has been urged in opposition to their arguments. Mr. Bentham's objections will be found in a chapter on Transportation, in his 'Theory of Punishments;' the archbishop of Dublin's, in his two 'Letters to Earl Grey.' Their arguments may be summarily stated as follows:—1st, Transportation has failed in all experiments which have yet been made upon the principle. 2nd, That transportation necessarily involves, in reference to the country from which the criminals are sent, want of exemplarity. 3rd, That it lays a pernicious foundation for future communities. 4th, That efficient inspection is sacrificed by it. 5th, That it is more expensive than a home prison system. To these objections it is replied—1st, That transportation has not failed, but only a particular system of carrying that punishment into execution—a system which is not necessarily connected with transportation; a system which was instituted in the colonies at a time when prisons in the parent country were in the worst state possible; a system never amended in principle according to the

progress of improvements in penal arrangement generally. 2nd, That in reference to the end contemplated by the word example or exemplarity, transportation is not deficient excepting in the supposition that exemplarity is an effect only of the *spectacle* of criminals enduring punishment; but in that sense, that all experience proves that, instead of preventing crimes, exemplary punishments have frightfully increased them,\* that in so far as there is any real value in the principle (exemplarity) in question, it is as an indefinite, obscure source or cause of apprehension; but, that overlooking objections to the principle, in point of fact, in the sense of exemplarity as connected with the *spectacle* of punishment, that transportation is in the same situation as any home system of convict discipline, the public at large being as little the spectators of the process of the *silent* or the *separate* prison as they are of that under which transportation is carried into effect; that in the sense of general tendency to produce apprehension independently of *exhibited* punishment, it has superior recommendations to any home system. 3rd, That the objection, that transportation lays a pernicious social foundation, is made on a presumption involving the primary question which penal institutions are designed to solve, viz., that the convicts sentenced to that punishment are

\* Exposure in a state of punishment was introduced into Pennsylvania in 1786. In the year 1790, four years after its commencement, this practice was abolished, and the effect was astonishing: for at the end of another period of four years, that is to say, 1791, the population having in the meanwhile increased at the rate of four and a half per cent. per annum, and the penal law in other respects having remained unaltered, crimes had decreased by two-thirds. The increase of recorded crimes after the introduction of exposure was too great and too continuous to be accounted for to any great extent by an increase of prosecutions otherwise than by reason of an increase of crimes. And no part of the subsequent decrease of recorded crimes can be so accounted for. We have remarked in this instance one fact, which seems to speak for itself enough to settle this question. The decrease of crime in the town of Philadelphia, where, doubtless, most of the exposures were made, was much greater than the decrease of crime in the county, great though that was, pp. 87-8. (*Report of the Committee on Prison Discipline to the Governor-General of India, Calcutta, 1838.*)

always to be criminal in character and habit; but that, on the contrary, the circumstances of society in a new country are economically, in the respects of high wages, abundant labour, and good prospects, much more calculated to establish and confirm the moral benefit to the character of a former criminal wrought by a good system of secondary punishment, than the circumstances of an old society in which employment is uncertain, wages low, &c.; that, besides, prejudice is always stronger against the man once fallen, and consequently more opposed to his permanent reformation, in an old and established community, than in a young, unorganized, and, so to speak, chaotic one. 4th, That experience has not proved the existence of greater abuses in the management of convicts abroad than in their management at home; and that the same provision can easily be made against abuse in connection with penal colonies which has been made in connection with prisons in the mother country (in the appointment of inspectors) within the last few years. 5th, That the question of expense, unless where the difference supposed between that of two systems is very great, is prematurely discussed, when discussed without respect to any satisfactory evidence of the greater efficiency of one than of another system. (Captain Maconochie's *Australiana*; Colonel Arthur's *Letters to the Archbishop of Dublin*; *The Merits of a Home and of a Colonial Process, of a Social and a Separate System of Convict Management, discussed*, by F. M. Innes, 1842.)

*Hulks* (*hulk*, Dutch; *hule*, Saxon, the body of a ship), used as places of confinement and punishment for offences; corresponds with the *galea* of the Italians, the *galère* of the French, and our own English word *galley*.

*Hulks*.—The plan of confining offenders on board hulks was adopted in England in 1766, when the disturbances in America interrupted the transportation system. The first statute authorising such confinement was the 16 George III. c. 44, passed in 1776, for two years only, but afterwards continued by two other acts of parliament till it was repealed by the 19 George III. c. 74, which was,

however, founded upon the same principles with the 16th, and may be considered in part as an improved edition of that act.

The notice of parliament does not appear to have been called to the hulks between the passing of the 19 George III. c. 74, and the year 1783, when an act was passed, the 24 George III. sess. 1, c. 12, converting the hulks from prisons, in which criminals were to be punished by hard labour, into places of temporary confinement for convicts, between the period of their sentence to transportation and the completion of the necessary arrangements for carrying that sentence into execution. The management of the convicts was given to officers called overseers, whose powers corresponded with those of the superintendents under the former act. They were to feed and clothe the offender, and keep him in such manner, and to permit him, where the same could be safely done, to labour at such places, and under such directions, limitations, and restrictions, as his majesty or certain justices of the peace should appoint. In case the convict should receive employment, he was to be allowed half the return arising from his labour for his own use; but it was provided that no convict should be obliged to work.

The time of the offender's confinement was to be reckoned in discharge or satisfaction of the term of his transportation, as far as it might extend. Similar returns to parliament or the King's Bench were required under this as under the former act. The 24 George III. sess. 1, c. 12, was repealed by the 24 George III. sess. 2, c. 56, but its provisions were incorporated in this act, with the exception of those concerning the labour of the convicts, which it was provided should be compulsory. This last act was continued by various other acts till the year 1815, without any alteration in its purpose, excepting in the 28 George III. c. 24, and the 42 George III. By the former of these it was provided that the convicts should be visited and treated as offenders sentenced to hard labour, and that the expenses occasioned by their maintenance or death should be defrayed by the overseers. By the latter the inter-

est of the contractors was limited to that of supplying provisions, clothing, and other necessities to be consumed in the hulks. The 55 George III. c. 156, repealed and re-enacted by the 56 George III. c. 27, empowers the king to appoint a person to the office of superintendent, and the persons to be deputy or assistant superintendents, also resident overseers. The latter of these acts was continued by the 1 and 2 George IV. for two years, and its provisions were then re-enacted with some variations, in the 5 George IV. c. 34. (*Statements and Observations concerning the Hulks*, by George Holford, Esq., M.P.)

From the evidence taken before a Committee of the House of Commons appointed in 1832 to inquire into the subject of secondary punishments, and before a Committee of the House of Lords in 1835, we are led to conclude that no material changes had then been effected in the discipline pursued on board the hulks.

The stations at which hulks are maintained in England are Portsmouth, Gosport, Devonport, Chatham, Woolwich, Deptford; besides Bermuda, Gibraltar is designed to be a foreign station.

The following returns relating to the hulks are taken from the reports which were made by the superintendent to the government:—On the 1st January, 1841, there were 3552 convicts on board the various hulks in England; and during the year, 3625 more were received into custody, besides 63 transferred from the hulks at Bermuda. Of the convicts in custody, and those received in the course of the year, in all 7240, 2374 were transported to Van Diemen's Land, 180 of whom were boys under sixteen years of age; 80 were sent to Bermuda; 66 were transferred to the Penitentiary (Millbank); and 7 to Parkhurst prison: 262 were discharged; 196 died (being  $2\frac{1}{2}$  per cent. upon the gross number); 1 escaped; leaving 4254 convicts on board the hulks in England on the 31st December, 1841. Of the total number received, 52 were known to have been transported\* before; 10 had been in the Penitentiary; 1625 had

been convicted previously of various offences; 487 had been before in custody; and the remaining 1451 were not known to have been in prison before. Three prisoners were received during the year under 10 years of age; 213 between the ages of 10 and 15; 958 between 15 years and 20; 1612 between the ages of 20 and 30 years; and 839 who were above 30 years of age. The total expense of the hulks is represented for the year as 64,527*l.* 10*s.* 7 $\frac{3}{4}$ *d.*, and the total value of the labour performed as 72,386*l.* 16*s.* 6*d.* (*Two Reports of John Henry Capper, Esq., Superintendent of Ships and Vessels employed for the Confinement of Offenders under Sentence of Transportation, ordered to be printed 21st March, 1842.*) The total expense per man in the hulks in England is 18*l.* 12*s.* 11*d.* The average value of labour per man is estimated at 10*l.* 18*s.* 9*d.*, making the average annual expense per man 7*l.* 14*s.* 2*d.* The total cost per boy in the hulks is 13*l.* 5*s.* 6 $\frac{1}{2}$ *d.* The value of the labour performed by the prisoners in the hulks at Bermuda leaves an estimated annual profit for each of 13*l.* 3*s.* 6*d.* (*Lord John Russell's Note on Transportation and Secondary Punishment, 8th January, 1839.*)

The hulks in England are viewed merely as an intermediate establishment between the common gaols and the penal colonies, for prisoners sentenced to transportation; but, in fact, in many cases they prove a substitute for that punishment. They are considered to be the worst branch of secondary punishment in England, and their discontinuance has been urged.

PRISONS (*Prison*, French), places of safe custody, of punishment, and reform.

The history of modern improvements in the prisons of this country begins with the labours of Mr. Howard in the last century. In the first section of Mr. Howard's book on 'The State of the Prisons in England and Wales,' which he entitles 'A General View of the Distress in Prisons,' published in 1775, he presents a summary of the abuses which existed in the management of criminals at that time. These abuses related to food, ventilation, drainage, want of classification of prisoners; and the effects were disease

\* This means had been in the hulks before



and the further corruption of all persons who were confined in prisons.

The labours of Howard and of others were but slowly attended with success. Nearly fifty years after the date of the above details the Prison Discipline Society remark, that there yet exist many prisons in the same condition as that in which Howard left them—monuments of the justice of his statements, and of the indifference with which his recommendations had been regarded. (*Fifth Report*, p. 16.) In 1818 it appears by parliamentary returns, that out of 518 prisons in the United Kingdom, to which upwards of 107,000 persons were committed in that year, 23 prisons only were classed or divided according to law; 59 prisons had no division whatever to separate males from females; 136 had only one division for that purpose; 68 had only two divisions, and so on; 23 only were divided according to the regulations of the statute (24 George III. c. 54, sect. 4) which provides for eleven. In 445 prisons no work of any description had been introduced; in 73 prisons, though some work was performed, yet the number was exceedingly small in which employment to any extent had been carried on. In 100 gaols built to contain only 8545 prisoners, there were at a time 13,057 persons confined.

*Classification of Offenders.*—The argument of those who wished to make the experiment of classifying prisoners is thus succinctly stated by a distinguished American writer on penal jurisprudence:—"That, as a place of punishment, a prison would soon lose its terrors if its depraved inmates were suffered to enjoy the society within, which they had always preferred when at large; and that, instead of a place of reformation, the prison would become the best institution that could be devised for instruction in all the mysteries of vice and crime, if the professors of guilt were suffered to make disciples of those who may be comparatively ignorant. To remedy this evil therefore we must resort to classification; first, the young must be separated from the old; then we must make a division between the novice and the practised offenders. Further subdivisions however were found indis-

pensable, in proportion as it was discovered that in each of these classes there would be found individuals of different degrees of depravity, and of course not only corrupters, but those who were ready to receive their lessons. Accordingly, classes were multiplied, until in some prisons in England we find them amounting to fifteen or more." The same writer exposes the fallacy of this argument in what follows:—"But in the consideration of this question these evident truths seem not to have had their proper force: first, that moral guilt is not the immediate subject of human observation; nor, if discovered, is it capable of being so nicely appreciated as to enable us to assign to each individual who may be infected with it his comparative place in the scale; and if it could be discovered, it would appear that no two individuals could be found contaminated in the same degree: secondly, that if these difficulties could be surmounted, and a class formed of individuals who had advanced exactly to the same point, not only of offence, but of moral depravity, still their association would produce a further progress in both." (*Livingston's Penal Code for the State of Louisiana; Introductory Report to the Code of Reform and Prison Discipline*, p. 309; see also q. 1784, *Evidence of Samuel Hoare, Esq.; Select Committee of the House of Commons*. 1832.) Classification continues to be the leading principle of arrangement in many prisons; in others the object contemplated by it, namely, the prevention of contamination, is further sought by the prohibition of oral communication between the prisoners.

Of the prisons which have been subjected to any fundamental changes during the last twenty years, the greater number are conducted on the *silent* system. The advocates of this system supposed that contamination would be prevented by the intercourse of the tongue being prohibited. The first objection incurred in carrying out this plan was the great expense of employing a requisite number of officers to enforce silence. To mitigate or get rid of this objection, another evil was produced by the introduction of the practice of giving to pri-

soners a control over other prisoners. In Coldbath Fields prison, containing on an average 900 prisoners, no less than 218 were, in 1837, removed from the operation of the law and the endurance of their punishment by being appointed to offices of trust or control. Besides these 218 there were 54 regular officers; so that 272 persons were appointed to superintend 682 prisoners (*i. e.* 900 minus 218, who had appointments), being in the ratio of one officer to  $2\frac{1}{2}$  prisoners. With all this wasteful superintendence, involving so entire a sacrifice of discipline, the great object of prisons on the principle of Coldbath Fields was not attained. "The minds of the prisoners (say the Inspectors of Prisons in their Report for that year) are kept under perpetual irritation by the prohibition of speech, their ingenuity at work to find means of evading it, and they are still further depraved by frequent subjection to punishment for an offence of a merely arbitrary character."

Under any arrangements the principle on which such prisons are conducted almost necessarily involves great and numerous vices.

The power of establishing rules for prisons is vested by 5 & 6 Wm. IV. c. 38 in the secretary of state for the home department. Distinct divisions of each prison are appropriated to male and female prisoners. The several wards, cells, yards, &c., are devoted to distinct classes of prisoners. There are baths for the cleansing and bathing of prisoners; a fumigating oven for the cleansing and disinfecting of their clothes, linen, or bedding. A competent number of cells adapted to solitary confinement for the punishment of refractory prisoners, and for the reception of such as may by law be sentenced to confinement therein, is provided. Separate rooms are provided as infirmaries or sick wards for the two sexes, and as far as possible for the different descriptions of prisoners. Every prisoner is provided with suitable bedding, and every male prisoner with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners. Convenient places are set apart for washing,

combing, &c., and yards for exercise.

It is provided by law that the visiting justices appointed at each quarter-session shall meet periodically at the prison and inspect the several journals, registers, and books, and give such directions as may to them seem necessary; that they shall regulate a scale of fines to be levied by the governor upon the subordinate officers for negligence in the performance of their duties; that they may suspend any officer; examine from time to time the state of the buildings, the classification, separation, inspection, hard labour, employment, health, diet, instruction, &c. of the prisoners; also into the amount and disposal of their earnings, the expenses attending the prison, and any improvement which may be practicable; they are required to direct such books as they think proper to be distributed for the use of prisoners who do not belong to the established church; they may enter into contracts for the employment of prisoners in any work or trade within the prison, subject to the sanction of the general or quarter session; they may authorize any prisoner to be employed in the service of the prison, but not in the service of any officer in control or instruction of any other prisoner; they may order necessary clothing or tools to be given to any prisoner on his discharge, or may pay his passage home, or present him with such a moderate sum of money as they may think fit: they are required to make a report respecting the state of the prison at every quarter-sessions: in case of contagious disease, or any other emergency, they are empowered to issue an order under their hands and seals, to remove the prisoners to some other prison or place of confinement within their jurisdiction; in case of any criminal prisoner being guilty of repeated offence against the rules of the prison, or of any greater offence than the governor is authorized to punish, a visiting justice may order the offender to be punished by solitary confinement; and in case of absolute necessity, by confinement in irons; a visiting justice may receive the complaint of any prisoner. Spirits, wine, beer, and tobacco are prohibited to any prisoner excepting in cases

approved of by the surgeon. For every prison it is provided that there shall be a governor, chaplain, and surgeon; and for the female branch of the prison a matron; and a sufficient number of schoolmasters and mistresses, male and female turnkeys, and subordinate officers; none of whom, excepting the chaplain and surgeon, are allowed to hold any office or have any occupation except what refers to the prison. For the various rules as to the governor, and his administration, the chaplain, surgeon, and so forth, the reader may consult the Act.

A different dress is worn by a prisoner convicted of felony from one convicted of a misdemeanor: he is employed, unless prevented by sickness, at such hard labour as can be provided, and for so many hours (not exceeding ten) daily, except on Sundays, Christmas, Good-Friday, or any public fast or thanksgiving day. Some descriptions of misdemeanants are allowed to wear their own clothing if deemed sufficient and proper; and they have various other privileges. Prisoners convicted of felony, but not sentenced to hard labour; prisoners convicted of misdemeanour, who do not come under the description contemplated in the above detail; and other convicted prisoners not sentenced to hard labour—must be clothed in a particular dress, and employed in some work or labour which is not severe; and they are restricted to a prison diet. They are required, like all other prisoners, excepting misdemeanants of the first division, to preserve silence. (*Rules and Regulations for the Government of Westminster Bridewell, as certified by the Secretary of State for the Home Department, 17th June, 1841; Regulations for Prisons in England and Wales, 1840.*)

The labour which is most generally imposed in prisons conducted on the silent system is that of picking oakum, and of the tread-wheel. The labour of the tread-wheel is at present chiefly applied to the grinding of corn and pumping water for prison consumption. (See *Description of the Tread-mill for the Employment of Prisoners, with Observations on its Management, published by*

*the Committee of the Society for the Improvement of Prison Discipline, &c.*)

In some prisons females as well as males are employed on the tread-wheel, the application of this mode of punishment to either or both of the sexes being determined by the discretion of the justices of the peace in connection with each prison. The application of tread-wheel labour to women is liable to occasion miscarriage in cases of pregnancy, and in various ailments of the sex it is apt to produce serious disease; it is injurious also to males when applied for a prolonged period. As a punishment it is very unequal, its severity depending upon the physical strength of those subjected to it; and it has been administered with great want of uniformity in different prisons.

Another mode of employing prisoners, but one which is not so much in use as the tread-wheel, is with the crank machine, which is constructed of different sizes. Plans will be found in the work to which we refer. (*Description of the Tread-Mill, and of the Portable Crank-Machine by Wm. Hase.*)

The average expense of each convict kept in a House of Correction, on the silent system, is about 55*l.* or 56*l.* for four years. (Lord John Russell's *Note on Transportation and Secondary Punishments*, January 2, 1839.)

Separate imprisonment differs from what is ordinarily understood by solitary imprisonment in the following particulars:—"In providing the prisoner with a large, well-ventilated, and lighted apartment, instead of immuring him in a confined, ill-ventilated, and dark cell; in providing him with everything that is necessary to his cleanliness, health, and comfort during the day, and for his repose at night, instead of denying him those advantages; in supplying him with sufficient food of wholesome quality, instead of confining him to bread and water; in alleviating his mental discomfort by giving him employment, by the regular visits of the officers of the prison, of the governor, surgeon, turnkeys, or trades' instructors, and particularly of the chaplain, instead of consigning him to the torpor and other bad consequences of idleness, and the

misery of unmitigated remorse; in separating him from none of the inmates of the prison except his fellow-prisoners, instead of cutting him off as far as may be from the sight and solace of human society; in allowing him the privilege of attending both chapel and school, for the purposes of public worship and education in class (securing on these occasions his complete separation from the sight and hearing of his fellows), instead of excluding him from divine service and instruction; in providing him with the means of taking exercise in the open air, whenever it is necessary and proper, instead of confining him to the unbroken seclusion of his cell." (*Inspectors' Report*, 1838.) Arguments both for and against this system have been urged with considerable force. (*Australiana, or Thoughts on Convict Management*; and *A General View of The Social System of Convict Management, &c.*, by Captain Maconochie; *The Merits of a Home and of a Colonial Process*; *of a Social and of a Separate System of Convict Management*, by F. M. Innes; *Reports of the Inspectors of Prisons.*)

The separate system originated in this country in the year 1790, and was first tried in the county gaol, Gloucester. This building was provided with cells in which prisoners were confined apart, day and night, from the hour of admission to that of discharge. Those confined under short sentences were denied, those under long sentences were provided with, employment. Moral and religious instruction was given in the cells and in the chapel. This discipline was enforced during seventeen years, in which period there were very few re-commitments. But the increase of population demanding increased prison accommodation, the system was abandoned to make room for additional prisoners. In 1811 the favourable opinion conceived of separation in prisons by a committee of the House of Commons led to a recommendation "that a separate prison should be erected in the first instance, for the counties of London and Middlesex, and that measures should be taken for carrying on the penitentiary system, as soon as might be practicable, in different parts of the

country." In the following year (1812) the act 52 Geo. III. c. 44, was framed in conformity with the committee's recommendation, by which act the Penitentiary at Millbank was commenced in 1813—subsequent acts granting leave to increase its accommodations. In 1821 this great prison was completed for the reception of 1200 convicts, for England, Scotland, and Wales. The separate system did not begin to be carried out for some years after the establishment of Millbank Penitentiary, and after having been for some time in operation it was abandoned, owing to the great mortality which prevailed there. This mortality, it is alleged, resulted from the unhealthiness of the situation in which the Penitentiary is built, and all connection of it with the separate system, in the nature of a consequence, is denied. (*Inspectors' Reports.*)

A model prison on the separate system at Pentonville, London, has been completed, and others have been built or projected in different parts of England; the success or failure of which will determine whether the system shall or shall not become general. The Fourth Report of the Inspectors of Prisons explains the general principles followed in the construction of the Model or Pentonville prison.

Any estimate of the expense per prisoner of the *separate* system must, until that system has been for some time in operation, be liable to dispute. At Millbank Penitentiary (which is allowed to be an imperfect criterion) the net annual expense of each prisoner, deducting his earnings, is said to be 24*l.* 6*s.* 6*d.* (Lord John Russell's *Note on Transportation and Secondary Punishments.*) It is urged by the advocates of the system that the sentence of imprisonment in a *separate* prison need be only a half or two-thirds the duration of a sentence to any other prison for it to be as severe and as much dreaded, and that the difference of expense will be thus made up.

The improvement in prison discipline has little more than commenced; and even in the metropolis vices which have been long admitted as such continue in undiminished force. The description of

the great gaol of Newgate, given by the Inspectors of Prisons in their Report for 1837, equally applied in the year 1842:—"The prisoners are associated in smaller numbers than formerly, but they are thrown into closer contact, and companionship is more directly facilitated; their mutual acquaintance is more perfect; their knowledge of each other's habits, tempers, and capacities is more readily acquired, more firmly established, and more mischievously brought to bear against the interests of society and their own well-being and reformation. What (say the inspectors) but mischief, inevitable and manifold, can be expected from locking up from morning to night, without intermission and change, in utter idleness (in numbers varying from three to fifteen, or even more), the most abandoned characters, adepts in crime, compelled associates with the uninitiated or trivial offender?"

The new County Gaol and House of Correction at Reading, Berkshire, has been constructed for the application of the separate system, and has now (1846) been more than two years in operation. Alterations have recently been made in the Hertford County Prison, for the same purpose. The results have been in the highest degree satisfactory wherever the system has been brought into operation.

Criminals are sometimes punished by fine, and sometimes by whipping. Fine is imposed for criminal offences only in peculiar cases—where, for instance, the offender is a wealthy person. Whipping is seldom used excepting in the case of juvenile offenders, or as a disciplinary punishment in the hulks or in prison. But the principle of corporal punishments, in England, as everywhere else, is becoming daily more unpopular, and its practice going into disuse. Another mode of punishment, but one which has also nearly passed into desuetude, is that of the stocks.

Prisoners committed for trial or for examination are permitted to wear their own clothing in prison, provided it be sufficient; they are not compelled to work or labour; but at their own request or with their own consent may be supplied with any work not severe, or they may,

at their own expense, procure any employment, materials, and tools which the governor may deem safe and proper. Provided no bill has been found against a prisoner, or that upon his trial he has been acquitted, he is allowed such a proportion of the amount of his earnings as the visiting justices deem fit and reasonable. Prisoners of this class are permitted to see their friends on any week-day without any order, within specified hours; and their legal adviser at any reasonable hour. Letters to and from them are subject to the inspection of the governor. They are liable, in case of their being riotous, or disorderly, or being guilty of a breach of the regulations, to be confined in separate cells, and be allowed no other food from the county than bread and water. (*Regulations for Prisons in England and Wales*, issued by the Secretary of State, 1841.)

The application of the separate system to untried prisoners remains yet to be carried into more complete operation. Clerkenwell Prison, Middlesex, has been taken down, and a new County Gaol, on the separate system, for the untried and for prisoners under examination, is in progress of construction, on an enlarged site and extended scale.

The disposal of criminals after the expiration of the period of their imprisonment is, in England, one of the most difficult questions connected with punishments, and it is one for the settlement of which no measures have yet been adopted or devised. Until this deficiency is supplied, under any system of secondary punishment whatever, the immense amount of recommitments which take place in this country may be expected to continue. The amount of recommitments is an evidence not merely of the inefficiency of particular modes of punishment, but probably, more generally, of the difficulty of finding employment in this country. Mr. Bentham suggested several means whereby this object might be met: employment in the army or navy; the encouragement of voluntary emigration to the colonies; the requiring of security for good behaviour, with liberty to the surety to contract for the prisoner's labour; or a subsidiary establishment for the recep-

tion of the prisoners under a modified kind of imprisonment. Of these methods it is not improbable that the encouragement of voluntary emigration will be resolved upon. It is a question whether the emigration should not be compulsory instead of voluntary. But to this it has been objected, that making emigration thus as it were a punishment or part of a punishment, would tend to render it, by association of ideas, a mark of disgrace, whereas it is desirable that industry should be encouraged to find channels for itself in the colonies.

Until recently there was no further distinction observed in the discipline of juvenile offenders than by their separate classification from the adults in the hulks, in prisons, &c., where they were put to the same or nearly the same routine of duties as the adults: but with the establishment of the Parkhurst Reformatory, in the Isle of Wight, the commencement of systematic improvement in this respect has been made.

The objects sought to be attained at the Parkhurst prison, are the penal correction of boys with a view to deter juvenile offenders generally from the commission of crime, and their moral reformation. The disposal of the boys at Parkhurst on release is a question of some difficulty. Of those liberated since its establishment some have been apprenticed to the trades in which they were educated there; others have been sent to the Refuge for the Destitute, and the Philanthropic Institution, and a considerable number have been sent to New Zealand. Nine years have now (1846) elapsed since the opening of the Parkhurst Prison, and its results have been highly satisfactory. The establishment originally provided for 320 boys, but it has been so materially enlarged as to be capable of accommodating 720.

Provision has also been recently made at the Millbank Prison, Westminster, for the probationary confinement of 200 youths, from 16 to 20 years of age. There is now sufficient provision for juvenile transports; but further establishments, on the reformatory plan, are still required for those boys who from their tender age and small size are unfit to be

transported, and for various descriptions of minor juvenile offenders.

The Prisons Regulation Act (5 and 6 Wm. IV. c. 38) empowers one of the principal Secretaries of State to appoint a sufficient number of persons, not exceeding five, to visit and inspect, either singly or together, every gaol, bridewell, house of correction, penitentiary, or other prison or place for the confinement of prisoners, in any part of Great Britain; and to examine officers, inspect books and papers, and inquire into all matters relating to the management and discipline of such place of confinement, and to deliver to the Secretary of State a Report thereon.

The Tenth Report of the Inspectors of Prisons for the Home District, is dated August 8, 1845, and states—that prison discipline and management have been generally improved; that great success has attended the application of the separate system, “by which alone,” they observe, “we are convinced, the prevalence of crime can be stayed, and the morals and habits of the prisoners can be permanently amended;” that, under this system, the health as well as the character of the prisoners have been improved, and the number of prison punishments greatly diminished; and that it is especially suitable for persons untried, who ought neither to be exposed to the contamination of association with other prisoners nor subjected to the irritating regulations of the silent system. The inspectors object in very decided terms to tread-wheel labour, as being opposed to the formation of permanent habits of useful labour, which ought to be aimed at in prison discipline, rather than compulsory labour for the mere purpose of punishment. The Report states that a great reduction has taken place in the number of debtors committed to prison, which has been in consequence of the act (7 and 8 Vict. c. 96) to amend the law of insolvency, which came into operation August 9, 1844. For instance, in the Debtors’ Prison, for London and Middlesex, the number committed between August 9, 1843, and August 9, 1844, was 2,529; whilst between August 9, 1844, and August 9, 1845, the number

was only 656, showing a decrease of 285.5 per cent. The Inspectors recommend urgently the formation of district prisons for juvenile offenders, where they may be kept apart from the contamination of the common gaols. As exceptions to the general improvement which has taken place in prison management and discipline, the inspectors state that no improvements have been effected in the prisons of the county of Bedford; and with reference to the prisons of the city of London they say, "We are compelled, by an imperative sense of duty, to advert, in terms of decided condemnation, to the lamentable condition of the prisons of the city of London — Newgate, Giltspur-street Compter, and the City Bridewell — in which the master-evil of gaol association, and consequent contamination, still continues to operate directly to the encouragement of crime."... "We have often recorded our opinion with reference to this subject, and we shall not fail to repeat our protest against the prisons of the city of London, until we see substituted," &c.

The Tenth Report of the Inspectors of Prisons for the Northern and Eastern District, which is dated February 20, 1846, states that a very material decrease has taken place in the criminal population of the district during the years 1844 and 1845; and that the prisons continue in a state of improvement. The Inspector remarks, that in consequence of the passing of the 8 and 9 Vict., c. 127, which authorizes the imprisonment, for short terms, of debtors who have contracted their debts under fraudulent circumstances, there has been some increase in the number of prisoners committed on that account.

As to the great reduction in the number of debtors in consequence of the 7 and 8 Vict. c. 95, coming into operation, and the increase in the number of debtors committed, as having contracted debts under fraudulent circumstances, in consequence of the passing of the 8 and 9 Vict. c. 127, it will be useful to refer to the remarks under the article *INSOLVENT*, p. 114, &c. The facts stated by the reports do not in this instance prove that there was any social improvement, be-

cause the number of commitments were diminished under the 7 and 8 Vict. c. 96: the true conclusion is, that a number of dishonest debtors were let out of prison or did not get into prison, and that is all. The increased number of committals of fraudulent debtors under the 8 and 9 Vict. c. 127, confirms this conclusion. It is true that the inspectors' report merely gives the decrease in the number of imprisoned debtors under 7 and 8 Vict. c. 96, as a fact; but it is possible that some persons might draw the wrong conclusions from this fact.

The Tenth Report of the Inspector of Prisons for the Southern and Western District, which is dated August 4, 1845, states that beneficial alterations are taking place, both in the construction of prisons and in prison discipline, and speaks in terms of approbation of the results of the application of the separate system.

There are several institutions auxiliary to the penal institutions of the country. The institutions referred to are either wholly supported by voluntary contributions, or partly by voluntary contributions and annual parliamentary grants, and their objects are to receive convict youths after they have endured the sentence of the law, as voluntary inmates, and to educate them in suitable branches of knowledge, and in useful trades; or to receive the destitute offspring of adult convicts who have been executed or transported, or are imprisoned for a lengthened period, and to give them the advantages mentioned. In the metropolis there are the Refuge for the Destitute, and the Philanthropic Society's Institution.

The Refuge for the Destitute was founded in 1805, and incorporated by Act of Parliament in 1838. It is a place of refuge for young persons of both sexes, discharged from penal confinement; or who, having lost their character by dishonest practices, are unable to procure an honest maintenance. The females in the establishment are employed in washing and in needlework, for which the institution contracts with the public, and in household work. The males are employed in shoemaking, tailoring, and preparing fire-wood for sale.

The Philanthropic Society embraces in

its scheme, besides juvenile criminals, the destitute offspring of criminals. The education given at the Society's institution, in addition to the details at the Refuge, includes the trades of printing, bookbinding, rope and twine-making. To those young men who, after quitting the institution, bring satisfactory testimonials from their masters by whom they have been employed of honesty, sobriety, and steady habits, rewards varying in amount are given at the end of one and two years respectively. This institution is entirely dependent upon voluntary contributions. (*An Account of the Philanthropic Society*, 1842, printed at the Institution.)

The prisons of Scotland were in a state of gross mismanagement when, in 1826, a Committee of the House of Commons was appointed to inquire into the subject. The recommendations of that committee, the appointment of inspectors, and the passing of an act of parliament (2 & 3 Vict. c. 46), by which the burden of maintaining prisons is removed from the royal burghs, and provided for by a general rate upon property, and their management is devolved upon county boards and upon a general board sitting in Edinburgh, have led to some improvements, and paved the way for still greater. This act, which was passed in August, 1839, is to continue in force ten years. Where system can be said to have been attempted in Scotland, it has been one of those which we have noticed in connection with England. The separate system has been for several years in force at Glasgow in respect to prisoners, the duration of whose sentence is six months or under, and, according to the reports of the inspectors of Scotch prisons, with generally good effects, although the construction of the prison in which the system is conducted is not completely favourable. The difficulty of procuring employment on release from prison has however been so great, that lately criminals in confinement at the Glasgow penitentiary, when in prospect of their liberation, have been found to threaten the commission of crimes for which they might again be sent there. Another separate prison has been established at Perth, and the extension of the

system is contemplated by the board of direction in connection with Scotch prisons, provision for the purpose having been made already by parliament.

The Seventh Report of the Board of Directors of Prisons in Scotland is dated February 11, 1846, and gives an account of the proceedings of the Board with relation to the General Prison at Perth; the proceedings with relation to Local Prisons; a statement of Receipts and Expenditure during the year 1845, and an estimate of the funds which will be required for the year 1846.

The gaols of Ireland are regulated by an act of parliament (7 Geo. IV. c. 74) passed in 1826, by which annual reports of the state of the several prisons are required from inspectors of prisons who had been appointed some years previously. From the reports of the inspectors a lamentable picture is to be drawn of the management of the prisons so recently as 1841. Industry appears to have been only partially introduced; classification, where it is attempted, is of the most imperfect description, and lunatics are frequently committed to prison simply as being dangerous to society, of which practice the results are, "that each prison in the kingdom has charge of from five to ten lunatics, and even more, to the great injury of the internal discipline and peace of the establishment, as well as to the poor individuals, as there is no proper accommodation for them, or means of treating the disease with a view to cure." (*Report of the Inspectors of Prisons for Ireland*, 1842, p. 9.)

As to the prisons in the British dependencies, the following authorities may be referred to:—"Resolution recorded by the Government of India on the 8th of October, 1838, after taking into consideration the Report of the Committee on Prison Discipline," Calcutta, 1838; "Report of the Committee on Prison Discipline to the Governor-General of India in Council," January 8, 1838, Calcutta; "Report of Captain J. W. Pringle on Prisons in the West Indies," July, 1838; and as to Lower Canada, the "Report of the Hon. D. Mondelet and J. Neilson, Esquires," Quebec, 1835.

TREASON. [LAW, CRIMINAL.]



**TREASURE-TROVE**, in legal Latin called *thesaurus inventus*, is a branch of the revenue of the crown of England, and belongs to the king or his grantees. Where coin, plate, or precious metals are found hidden in the earth or any private place, and the owner or person who deposited them is unknown, the property becomes vested in the king by virtue of his prerogative. But if the owner is known, or is ascertained after the treasure is found, the property belongs to him and not to the king. By a constitution of Hadrian (*Inst. i. tit. i., § 39*), if a man found treasure (*thesauri*) in his own ground, it belonged to the finder, and also if he found it in a place which was sacer (sacred to the gods above), or religious (sacred to the *Dii Manes*). If a man found treasure accidentally in another man's ground, the constitution gave half to the finder, and half to the owner of the ground. If he found treasure in the ground of the emperor, the finder had half, and the emperor half; and the law was the same if the ground belonged to the fiscus, or to the Roman people, or to any civic community. A constitution of the Emperors Leo and Zeno (*Cod. x. tit. 15*) is to the same effect as far as it goes. Grotius says that the title of the prince to treasure-trove had in modern times been so generally established in Europe as to have become '*jus commune et quasi gentium*' (*De Jure Belli et Pacis*, lib. ii. c. viii. § 7). The law of England adopts the Roman definition of treasure-trove of Paulus (*Dig. 41, tit. i. § 31*). "Treasure (*thesaurus*) is an antient deposit of money, of which there is no record so as to give it owner: for thus it becomes his who has found it, because it does not belong to another;" and to entitle the crown to the property, it must appear to have been hidden or deposited by some one who at the time had the intention of reclaiming it. Whenever therefore the intention to abandon appears from the circumstances—as for instance, where the property has been found in the sea, or in a pond or river, or even openly placed upon the surface of the earth—it belongs to the finder. In England the concealment of treasure-trove from the king was apparently formerly a capital offence; at

present it is a misdemeanour punishable by fine and imprisonment. (Blackstone's *Commentaries*, vol. i. p. 295.)

**TREASURER**. [*MUNICIPAL CORPORATIONS*, p. 391.]

**TREASURY**, a department of the British government which controls the management, collection, and expenditure of the public revenue. It is the business of another department, the Exchequer, to take care that no issues of public money are made by the Treasury without their being in conformity with the authority specially enacted by parliament. When money is to be paid on account of the public service, this is almost always done on the authority of a Treasury warrant; and in other cases the countersign of the Treasury is requisite. The Board of Treasury consists of the prime minister and the chancellor of the exchequer. The real office which the premier holds is generally that of first lord of the Treasury. There are also four junior lords, who have usually seats in parliament, as have also the two joint secretaries of the Treasury. The departments immediately subordinate to the Treasury are the boards of customs, of excise, of stamps and taxes, and the post-office, the various officers in which are to a great extent appointed by the lords of the Treasury; and this constitutes an important part of the patronage of the ministry. The control of the Treasury over the different boards of revenue and other departments is said to be much less complete now than it was fifty years ago. Constitutionally, its authority ought to be paramount. The duties of the board of Treasury are heavy and multifarious, all exceptional cases in matters relating to the revenue being referred to it. Previous to 1839 the annual parliamentary grant for education was dispensed by the Treasury; but from this business, to which it certainly could not pay sufficient attention, it was relieved by the appointment of the committee of Privy Council on Education. The offices of the Treasury are in Whitehall. The amount paid in salaries of 1000*l.* and upwards, is about 30,000*l.* a year. The First Lord of the Treasury receives 5000*l.* a year; two secretaries of the Treasury receive 2500*l.*

a year each, and the assistant-secretary 2000*l.* a year; the solicitor of the Treasury receives 2850*l.* a year; four commissioners of the Treasury receive 1200*l.* a year each; and other officers receive sums varying from 1000*l.* to 1500*l.* each. The amount paid in salaries below 1000*l.* a year we have no means of ascertaining. (Lord Congleton's *Financial Reform*.)

TREATY (from the French *traité*) means literally that which has been drawn up, or, in other words, arranged and agreed upon, by two or more parties, who are accordingly called the contracting parties.

Although a treaty is commonly defined to be an agreement made with one another by two or more governments, it is not necessary that every party to a treaty should always be a sovereign power or an independent political society. Bodies of persons or even individuals, may be empowered to enter into treaties. Thus the English East India Company has the power, and has repeatedly exercised it, of making treaties under certain limitations. But in all such cases this power must be given by the supreme authority in the state to which the contracting party belongs, or, which is the same thing, by the constitution or political system of which it is a member. Treaties then can only be made by sovereign powers, or by parties upon whom the sovereign power has conferred that right. In our constitution, for example, where the sovereign power consists of the king and the parliament, the power of concluding treaties with foreign powers generally belongs to the king. This is the all-important fact for foreign countries or other powers to look to in negotiating and entering into conventions with the English nation: the only party with whom they have to do in such matters is the king, or the ministers whom he may have delegated to act for him and in his name. In the United States of North America the president makes treaties with the consent of the Senate.

It is usual for the crown, in this as in other cases, to act through its representatives; and the question has arisen how far the principals to a treaty are to be held bound by the agreements entered

into by the authorised negotiators. The difficulty is this. The instructions given to the actual negotiator by his principal, as to what he shall accept or concede, are kept secret, at least in part, for obvious reasons: it is impossible therefore to know whether on any particular point he has exceeded his authority or not; and it would be always in the power of a government to allege that he had done so, if for any reason it desired to escape from the engagements which he may have made in its name. If such a plea were well founded, it would seem to be a reasonable one; and it could hardly be proved not to be founded in fact, in any case in which it was urged. It would appear therefore to be either useless or unfair to hold the negotiator's signature to be the real conclusion of the treaty; useless, if the plea that he had exceeded his powers were to be allowed to be afterwards urged in abatement of the stipulations he had made; unfair, if such plea were not to be permitted. Accordingly, notwithstanding some writers on the law of nations (De Martens, for example) have contended that a treaty is, strictly speaking, valid from the moment of its being signed, that is not the doctrine generally maintained; and at any rate the practice now completely established and always adhered to is for ratifications of the treaty to be exchanged between the contracting parties before it comes into operation. And there are many instances of states declining to ratify or to act upon treaties which have been signed by their accredited representatives.

A treaty, when made, is in fact only in force so long as the contracting parties choose to observe it; for as the contracting parties are sovereign powers, there is no superior authority to enforce the observance of the treaty. Respect for opinion and fear of other powers interfering, and various other motives may often combine to ensure the due execution of treaties, when the parties to them are not disposed to observe them.

Treaties between nations for mutual commercial advantages have been made at different times, but the small value of such treaties is now pretty well understood by those who are in favour of unre-

stricted commercial intercourse. Such treaties are cumbrous expedients for effecting what may generally be done better by the nation, which has most to give and is able to take most, relaxing its own restrictive laws; which is what Great Britain is doing now. A striking instance of the effect of Great Britain's example is contained in the 'Reciprocity Acts.' [SHIPS.]

A complete account of the printed collections of treaties is contained in the 'Discours Préliminaire sur les différens Recueils de Traités publiés jusqu'à ce Jour' (pp. 3-73), in the first volume of the 'Supplément au Recueil des Principaux Traités,' &c., by De Martens, 8vo., Göttingen, 1802. All preceding general collections are superseded by the great work of Du Mont and Rousset, entitled 'Corps Universel Diplomatique du Droit des Gens, contenant un Recueil des Traités d'alliance, de paix, de trêve, de neutralité, de commerce, d'échange, de protection, et de garantie, de toutes les Conventions, &c. . . . depuis le règne de l'Empereur Charlemagne jusques à présent,' &c., &c. The original work is in eight volumes, to which there is a supplement in five volumes which appeared in 1739.

The collection of Du Mont and Rousset has been completed and brought down to the present day by the late George Frederic de Martens, professor of the Law of Nature and Nations at Göttingen, and his successors, in their work entitled 'Recueil des Traités d'Alliance, &c. des Puissances et Etats de l'Europe,' &c., &c., the first volume of which, in 8vo., was published at Göttingen in 1790. Various supplements have been since published. The original work of de Martens consists of seven volumes.

There are separate collections of treaties published in nearly all the countries of Europe, consisting for the most part of those treaties to which the country has been a party, and which therefore form the history of its connection with foreign states. Most of those collections also De Martens has enumerated in the discourse already referred to. The most important of English collections is that entitled 'Thomæ Rymeri Fœdera, Conventiones,

Litteræ, ejuseumque generis Acta Publica, inter Reges Angliæ et alios quosvis imperatores, reges,' &c., in 20 volumes, folio, 1704—1735. It includes the period from A.D. 1101 to 1654. A second edition of the first 17 volumes (the last of which is occupied with an index to those that precede) was published at London, under the care of George Holmes, in 1727; a third, including the whole 20 volumes in 10, and with considerable additions and improvements, was brought out at the Hague in 1739; and a fourth, augmented by many new documents, has been in part printed under the direction of the late Record Commission. Various collections have been published since that of Rymer. The latest general collection of treaties which has appeared in this country is by George Chalmers, 2 vols. 8vo., London, 1790, which is a useful work. The new treaties and other state papers are annually published by the Foreign Office; and there is a very convenient work, entitled 'A Complete Collection of Treaties, &c., at present subsisting between Great Britain and Foreign Powers, so far as they relate to Commerce and Navigation, to the repression and abolition of the Slave Trade, and to the Privileges and Interests of the Subjects of the high contracting Parties,' compiled from authentic documents by Lewis Hertzlet, Esq., librarian and keeper of the papers, Foreign Office, 5 vols. 8vo., London, 1840.

For an enumeration of the principal works on the subject of treaties, and references to the passages in the writers on public law in which the subject is considered, the reader may consult the Introduction to De Martens's 'Précis du Droit des Gens Modernes de l'Europe, fondé sur les Traités et l'Usage,' 2 vols. 8vo., Paris, 1831; vol. i., pp. 132-166, 238-270, 316; and ii., 22-33, 63-69, 113, 216-234, 291-308. There is a very useful work by De Martens, entitled 'Cours Diplomatique,' 3 vols. 8vo., Berlin, 1801; of which the first two volumes (entitled separately 'Guide Diplomatique') contain an account of the principal laws of the powers of Europe and of the United States of America, relating to commerce and the rights of foreigners in peace and

in war, and a list of the treaties and other public acts connecting these states, from the commencement of their diplomatic intercourse to the end of the eighteenth century; and the third is entitled 'Tableau des Relations Extérieures des Puissances de l'Europe, tant entre elles qu'avec d'autres États dans les diverses Parties du Globe.' In the *Companion to the Almanac for 1831*, pp. 44-63. will be found 'A Chronological Table of the more important Treaties between the principal civilized Nations, with Notices of the Wars and other Events with which they are connected, from the beginning of the fourteenth century to 1830.'

TRIAL. [LAW, CRIMINAL.]

TRINITY HOUSE OF DEPTFORD STROND, THE CORPORATION OF—its full title is, 'The Master, Wardens, and Assistants of the Guild, Fraternity, or Brotherhood of the most Glorious and Undivided Trinity, and of Saint Clement, in the parish of Deptford Strond, in the county of Kent'—an institution to whose members is intrusted the management of some of the most important interests of the seamen and shipping of England. The earlier records, together with the house of the corporation, were destroyed by fire in 1714, so that the origin of the institution can only now be inferred from usage and the occasional mention of its purposes in documents of a later period. It is probable that with Henry VII. originated the scheme, afterwards carried into effect by his son Henry VIII., of forming efficient navy and admiralty boards, which then first became a separate branch of public service. During the reign of Henry VIII. the arsenals at Woolwich and Deptford were founded: and the Deptford-yard establishment was subsequently placed under the direction of the Trinity House, who likewise surveyed the navy provisions and stores. The earliest official document relating to the Trinity House now extant, is a charter of incorporation made by Henry VIII. in the 6th year of his reign. An exemplification of this charter was granted by George II., in the third year of his reign. In this charter Henry says "We on account of the sincere and entire love and likewise devotion which we bear and

have towards the most glorious and undividable Trinity, and also to Saint Clement the Confessor, have granted and given licence, for us and our heirs, as much as in us is, to our beloved liege people and subjects, the shipmen or mariners of this our realm of England, that they or their heirs, to the praise and honour of the said most glorious and undividable Trinity and Saint Clement, may of *new begin*, erect, create, ordain, found, unite, and establish a certain guild or perpetual fraternity of themselves and other persons, as well men as women, in the parish church of Deptford Strond, in our county of Kent." The brethren are by the same charter empowered from time to time to elect one master, four wardens, and eight assistants, to govern and oversee the guild, and have the custody of the lands and possessions thereof, and have authority to admit natural-born subjects into the fraternity, and to communicate and conclude amongst themselves and with others upon the government of the guild and all articles concerning the science or art of mariners, and make laws, &c., for the increase and relief of the shipping, and punish those offending against such laws; collect penalties, arrest or distrain the persons or ships of offenders, according to the laws and customs of England or of the court of Admiralty. The charter also grants to the corporation all liberties, franchises, and privileges which their predecessors the shipmen or mariners of England ever enjoyed.

In the 8th year of the reign of Elizabeth, an act was passed enabling the corporation to preserve ancient sea-marks, to erect beacons, marks, and signs for the sea, and to grant licences to mariners during the intervals of their engagements to ply for hire as watermen on the river Thames.

In the 36th year of her reign Queen Elizabeth made a grant to the corporation of the lastage and ballastage of all ships in the river Thames, and of the beaconage and buoyage upon the coasts of the realm, which had previously afforded a considerable source of revenue to the lord high admiral. The grant recites that he had surrendered into the queen's hands the lastage and ballastage of all

ships coming into or being in the Thames, and also the right to erect and place beacons, buoys, marks, and signs for the sea, on it or on the shores, coasts, uplands, or forelands near it, and besought her to grant all powers respecting these matters to them. And it then proceeds to grant the same and all fees relating to them in the fullest manner to the corporation for ever.

James II. granted the Trinity House a fresh charter, the one now in force, in the first year of his reign. It recites the former grant and charter, and declares the body to be a corporation, and that for the future it shall consist of one master, and one deputy master, four wardens, and four deputy wardens, eight assistants, and eight deputy assistants, eighteen elder brethren, and a clerk. The master nominated by the charter was Pepys, then secretary to the admiralty. It determines the mode of election of those officers, their continuance in office, and the mode of removing them from it, if necessary; and declares that all seamen and mariners belonging to the guild shall be younger brethren. It directs the masters and wardens to examine such boys of Christ's Hospital as shall be willing to become seamen, and to apprentice them to commanders of ships. It also enables them to appoint and license all pilots into and out of the Thames, and prohibits under penalties all other persons from exercising that office; it also authorises the corporation to settle rates of pilotage, &c., to hold courts, &c. to punish seamen, deserting, &c., and make laws as to their subject-matters not inconsistent with the laws of the kingdom. It also contains many provisions directed to the object of keeping the navigation of the channels secret from foreigners, and renders the officers of the corporation liable to attend when required at the king's bidding. Since that time several acts of parliament have been passed for the purpose of authorising the Trinity House to regulate matters connected with the pilotage, &c., of vessels.

The various provisions in matters of pilotage under the management of the corporation were repealed by the 6 Geo. IV. c. 125, entitled 'An Act for the Amendment of the Law respecting Pilots

and Pilotage, and also for the better Preservation of floating Lights, Buoys, and Beacons,' which recites the extent of the jurisdiction of the Trinity House in regard to pilots to be upon the river Thames, through the North Channel, to or by Orfordness, and round the Long Sand Head, or through the Queen's Channel, the South Channel, or other channels into the Downs, and from and by Orfordness and up the North Channel, and up the rivers Thames and Medway, and the several creeks and channels belonging or running into the same; and contains a variety of minute regulations respecting the examination, licensing, and employment of pilots, the rates of pilotage, provisions for decayed pilots, the protection of buoys, &c. At present, however, besides those under the jurisdiction of the Trinity House and of the lord warden of the Cinque Ports, many independent pilotage establishments exist in various parts of the kingdom; but the expediency of subjecting all these to the uniform management of the Trinity House has been felt for some time past. The inconvenience resulting from the exercise of similar authorities vested in the hands of different parties had been felt with regard to the lighthouses on the coast, several of which had been vested in private hands by the crown; while some had been in times past leased out by the corporation itself, the lights in both instances being found to be conducted probably rather with a view to private interest than public utility. By an Act therefore of the 6 & 7 Wm. IV. c. 79, passed "in order to the attainment of uniformity of system in the management of lighthouses, and the reduction and equalization of the tolls payable in respect thereof," provision was made for vesting all the lighthouses and lights on the coasts of England in the corporation of Trinity House, and placing those of Scotland and Ireland under their supervision. Under this Act all the interest of the crown in the lighthouses possessed by his Majesty was vested in the corporation in consideration of 300,000*l.* allowed to the Commissioners of Crown Land Revenue for the same; and the corporation were empowered to buy up

the interests of the various lessees of the crown and of the corporation, as well as to purchase the other lighthouses from the proprietors of them, subject, in case of dispute, to the assessment of a jury. Under this Act purchases have been made by the corporation of the whole of the lighthouses not before possessed by that body, the amount expended for which purpose is near a million of money.

The annual revenue of the corporation is very considerable, and is derived from tolls paid in respect of shipping, which receives benefit from the lights, beacons, and buoys, and from the ballast supplied. The ballast is raised from such parts of the bed of the river as it is expedient to deepen, by machinery attached to vessels, and worked partly by the power of steam and partly by manual labour. The remainder of the revenue proceeds from lands, stock, &c., held by the corporation, partly by purchase, partly from legacies, &c., and donations of individuals. The whole is employed upon the necessary expenses of the corporation in constructing and maintaining their lighthouses and lights, beacons and buoys, and the buildings and vessels belonging to the corporation; in paying the necessary officers of their several establishments, and in providing relief for decayed seamen and ballastmen, their widows, &c. Many almshouses have also at various times been erected, which are maintained from the same funds. The present house of the corporation is on Tower Hill; the Trinity House was formerly in Water Lane, where it was twice destroyed by fire. There are thirty-one Elder Brethren. The Younger Brethren (who are unlimited in number) are or have been commanders of merchant-ships. Neither the honorary members nor the Younger Brethren derive any pecuniary advantage from their connection with the corporation. King William IV. was master at the time of his accession to the throne. Formerly, according to Stowe, sea-causes were tried by the Brethren, and their opinions were certified to the common-law courts and courts of admiralty, such cases being referred to them for that purpose. This is not the practice at present; but two of the Elder Brethren now sit as assistants

to the judge in the court of admiralty in almost all cases where any question upon navigation is likely to arise. The various duties of the corporation are parcelled out among the wardens and different committees appointed for the purpose of discharging the same. One of the most important of these is the Committee of Examiners, before whom all masters of vessels in the navy, as well as pilots, undergo an examination. The deputy-master and Elder Brethren are employed on voyages of inspection of their lighthouses and lights, beacons and buoys, not unfrequently in most trying weather and seasons; and they are also often engaged in making surveys, &c., on the coast, and reports on such matters of maritime character as are referred to them by the government. The sums paid to the deputy-master and Elder Brethren for their services are—to the former 500*l.* per annum, and 100*l.* further as the chairman of all committees, and to each of the Elder Brethren 300*l.* per annum.

**TRINODA NECCESSITAS.** This term, in Anglo-Saxon times, signified the three services due to the king in respect of tennures of lands in England for the repair of bridges, the building of fortresses, and expeditions against his enemies. All the lands within the realm were bound to contribute to these three emergencies, on the principle of their necessity for general convenience or safety; and for this reason every man's estate was subject to the *trinoda necessitas*, whatsoever other immunities he might enjoy. Even in royal grants to the Church of privileges and exemptions from secular services, the right of requiring contribution for these purposes was almost always reserved to the king. (Selden's *Janus Anglorum*, i. 42; Cowell's *Interpreter*, ad vocam.)

**TRIPLE ALLIANCE** means a contract entered into by a treaty between three different powers, by which each of the contracting parties, by contributing its share to the execution of it, is also entitled to a proportionate share of those advantages which may be derived from it. Such a treaty may be concluded either for defensive purposes, when each power pledges itself to assist the other,

or the others in case of attack; or it may be entered into for an offensive object, when the contracting powers engage to commence and carry on a war against a fourth party. It has been discussed by several writers on international law, whether two of the three contracting parties have a right, after a triple alliance or treaty has been concluded among them, to enter into separate stipulations in which the third party does not participate and is not privy to. This question has never been fairly settled, like many other intricate questions in that obscure branch of jurisprudence, and in case of difficulty, the strongest hand would establish and maintain its own particular doctrine. Martens, however, is of opinion that no separate stipulations can be made without the consent of all parties, if three or more, and that this doctrine is recognised by all civilised nations. Powers allied by a treaty may in fact be considered as partners, who as such can enter into any agreements or treaties with other parties, without these other parties becoming participators in the first contract. For instance, this was the case in the late war, which resulted in the destruction of Napoleon's empire. Russia and Prussia concluded a treaty of alliance, defensive and offensive, at Kalish, which Austria afterwards joined; and this triple alliance, or partnership, entered afterwards as such into treaties under various conditions with Great Britain, Sweden, and almost all European powers, without these states however becoming parties to the original triple alliance.

**TRUCK SYSTEM. TRUCK ACT.** Truck, which means exchange or barter, has come to be appropriated to signify the payment of wages of labour in goods, and not in money. By the truck-system is meant this mode of paying wages, together with the mass of its tendencies and results. The Truck Act, 1 & 2 Wm. IV. cc. 36, 37, is an act passed in 1831, which, repealing all the previous acts passed for the same purpose, provided anew and more stringently for the prevention of payment of wages in truck in the departments of industry therein enumerated. The wages of agricultural labourers and domestic servants are ex-

empted from the operation of the act. The evidence published in the Report of the Select Committee of the House of Commons appointed in the session (1842) "to enquire into the operation of the law which prohibits the payment of wages in goods, or otherwise than in the current coin of the realm, and into the alleged violations and defects of the existing enactments," shows that, notwithstanding the Truck Act, the truck system is still in extensive operation in mills, factories, iron-works, collieries, and stone-quarries in the kingdom, and abundantly illustrates the evil tendencies of the system. These evil tendencies will be found also explained in the debates in parliament to which the introduction of the Truck Act gave rise in the years 1830 and 1831, and especially in the speeches of Mr. Littleton (now Lord Hatherton), the author of the act, Mr. Herries, and Mr. Huskisson.

It is to be observed, in the outset, that the chief part of the evil of what is called the truck-system is incidental, and not essential to the payment of wages in truck, and arises out of the power of the master over the workman, which enables the former to use this mode of paying wages to defraud and oppress the latter. A master may pay the wages of his workmen wholly or in part in truck, in articles of food, clothing, &c., either by agreement, or with only the understood consent of his workmen; and if he supply these articles at prices no higher than those at which they are to be procured elsewhere, and study to meet the various wants of the workmen and their families, the utmost harm that can result is the loss to the workmen of the moral and economical lessons which the disbursement by themselves of weekly money-wages is fitted to supply, and the interference with the business and profits of neighbouring retail shopkeepers; and there will always in such cases be some advantage to set against these, so far as they go, evil results. Where the truck-system acts beneficially, it is owing entirely to the justice and benevolence of the individual truck-masters. On the character of the master everything depends. In the hands of masters of opposite character, and

under circumstances, whether of scarcity of employment, of isolated situation, or of combination among masters in the same business, or through an extensive district, which place the workman more or less at the mercy of his employer, the payment of wages in truck may be, and continually has been, and is still extensively, used for the defrauding and oppressing of workmen.

The following is a summary of the Truck Act, often known as Mr. Littleton's Act, which was passed in 1831. It declares all contracts for hiring of the artificers afterwards enumerated, by which wages are made payable wholly or in part otherwise than in the current coin of the realm, or which contain regulations as to the expenditure of wages, to be illegal, null, and void. All payment of wages is to be in money entire; and any payment of wages in goods is declared illegal. Wages which have been paid otherwise than in the current coin of the realm are made recoverable; and in an action brought for the recovery of wages, no set-off is to be allowed for goods given in payment of wages, or for goods sold at any shop in which the employer has an interest. Employers are denied an action in return against artificers for goods which have been supplied in payment of wages. If workmen or their wives or children become chargeable to the parish, overseers may recover from their employers wages which have been earned within three months previous, and have not been paid in money. The penalty on employers making the illegal contracts or illegal payments of wages, to be for the first offence a sum not greater than 10*l.* nor less than 5*l.*; for the second a sum not greater than 20*l.*, nor less than 10*l.*; and the third offence is declared a misdemeanour; and the employer who has been convicted, to be punishable by fine within the discretion of the convicting magistrates, but not in a sum greater than 100*l.* The convicting justices are empowered to award a portion of the penalty, which shall never exceed 20*l.*, to the informer. The penalties may be sued for and recovered by any one before two justices of the peace having jurisdiction in the county, riding, city, or place

within which the offence has been committed. No justice of the peace being engaged in any of the trades or manufactures enumerated in the act, or the father, son, or brother of such person, shall act as a justice of the peace under this act; and provision is made for county magistrates taking the place of borough magistrates thus disqualified. Justices are empowered to compel attendance of witnesses. Power is given to levy the penalties by distress. A member of a partnership is not liable personally for the offence of his partner, but distress may be made on the partnership property. The 19th clause thus enumerates the artificers to whom the act relates:—"artificers employed in or about the making, casting, converting, or manufacturing of iron or steel, or any parts, branches, or processes thereof, or in or about the working or getting of stone, salt, or clay; or in or about the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal; or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures; or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another, or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever; or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton-lace, or of lace made of any mixed materials." Domestic servants and servants in hus-



bandry are exempted from the act. The 23rd clause declares that nothing in the act shall prevent the supplying to artificers of medicine or medical attendance, or fuel, materials, tools or implements to be used in his trade or occupation, if a miner; or of hay, corn, or other provender to be consumed by any horse or beast of burden, or the letting to any artificer the whole or part of any tenement, or the supplying of victuals dressed under the roof of any employer and there consumed; and making deduction of wages on any of the above accounts, or on account of money advanced, "provided always that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and provender, and shall not be in any case made from the wages of such artificer unless the agreement or contract for such stoppage or deduction shall be in writing and signed by such artificer." The interpretation clause (25th) gives a most extensive meaning to the word contract: "Any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other."

Such are the provisions of the Truck Act. Well adapted, as it would appear, for the purpose of protecting the workman against this species of oppression by his master, it is yet extensively violated and evaded.

**TRUST AND TRUSTEE.** A trust, which is in fact a new name given to a use, is defined by Lord Coke in the words employed by him for the definition of a use: "A confidence reposed in some other, not issuing out of the land, but as a thing collateral, annexed in privacy to the estate of the land, and to the person touching the land, for which *cestui que use* has no remedy but by *subpana* in Chancery." (Co. Litt., 272 b.) A trustee is he who undertakes to discharge a trust; and a *cestui que trust*, is the person who is entitled to the benefit of a trust.

Owing to the settlements made upon marriage, and the dispositions of property made by will, a great amount of property is in the hands of persons who hold it in trust for certain purposes defined by the instruments which create the trusts. There are also trusts for charitable purposes and others. The law relating to trusts is accordingly implicated with the law of property, and it also contains the rules as to the duties and powers of trustees, both with reference to the *cestui que trusts* and other persons. The Court of Chancery has the sole jurisdiction in trusts.

Trusts may be created either by deed or by testament. The Roman Fidei-commissum was only created by testament, and it was a testamentary disposition by which the testator gave something to one person, and imposed on him the duty of transferring it to another. It is stated that there were no legal means of compelling the discharge of this duty till the time of Augustus, who gave the consuls jurisdiction in Fidei commissa. Under Claudius prætors were appointed to exercise jurisdiction in Fidei commissa.

**TURBARY.** [COMMON, RIGHTS OF.]  
**TURKEY COMPANY.** [JOINT STOCK COMPANIES.]

**TURNPIKE TRUSTS.** Turnpike-roads are a peculiar species of highways placed by the authority of acts of parliament under the management of trustees or commissioners, who are invested with certain powers for the construction, management, and repair of such roads.

Besides the various local acts, there are several acts of parliament called General Turnpike Acts, the provisions of which extend and apply to all existing and subsequent local acts. The subsisting enactments upon this subject are contained in 3 Geo. IV. c. 126, which repeals former General Turnpike Acts; 4 Geo. IV. c. 16, c. 35, c. 95; 5 Geo. IV. c. 69; 7 & 8 Geo. IV. c. 24; 9 Geo. IV. c. 77; 1 & 2 Wm. IV. c. 25; 2 & 3 Wm. IV. c. 124; 3 & 4 Wm. IV. c. 80; 4 & 5 Wm. IV. c. 81; and 5 & 6 Wm. IV. c. 18, c. 62. The General Highway Act (5 & 6 Wm. IV. c. 50) also contains certain provisions applicable to turnpike-roads; but,

by the 113th section, does not extend to them except where expressly mentioned.

The trustees of turnpike-roads consist of persons nominated for that purpose in the Local Acts, who must be persons possessed of a certain property qualification, and of the justices of peace of the county or counties through which the roads pass; but all persons who are contractors or otherwise personally interested in the roads are disqualified from being trustees. (3 Geo. IV. c. 126, ss. 61, 62, *et seq.*) They are exempt from personal liability for acts done in pursuance of their powers, and may sue and be sued in the name of their clerk. (7 & 8 Geo. IV. c. 24, ss. 2 & 3; 3 Geo. IV. c. 126, s. 74.)

For the purpose of providing the necessary funds for making and maintaining the roads under their charge, trustees are usually empowered to receive moneys by way of subscription, upon which interest is payable to the subscribers out of the produce of the tolls which the trustees are by the local acts empowered to levy upon persons using the roads. Power is also given them to borrow money upon mortgage of the tolls. (3 Geo. IV. c. 126, s. 81.)

The enactments of the General Highway Act (5 & 6 Wm. IV. c. 50, s. 94), relating to summary proceedings before justices to compel repairs of highways, extend the jurisdiction of the justices to turnpike officers, where the highway out of repair is part of a turnpike-road; and while the liability to statute labour existed, it was exigible as well in respect of turnpike-roads as other highways; but the obligation of statute labour seems to be now entirely abolished by the repeal, in the 5 & 6 Wm. IV. c. 50, of the statutes under which statute labour was compounded for.

The amounts of toll exigible on any turnpike-road are regulated by the table of tolls which is contained in the local act by which the trust is constituted, and no tolls can be charged except such as are given by clear and unambiguous language in the Act; and there are various cases of exceptions.

Tolls upon turnpike-roads are in most cases made payable once a day only at

any one gate, and payment at one gate generally gives exemption from payment at other gates within a certain distance. Post-horses having passed through any gate may return toll-free before nine o'clock in the morning of the following day, and when horses, having passed through a gate, return the same day or within eight hours, drawing a carriage, the toll paid on the horses is to be deducted. (3 Geo. IV. c. 126, ss. 29, 30.)

The General Turnpike Acts contain various provisions regulating the weights to be allowed to carriages passing along turnpike-roads, and imposing additional tolls for overweight, and also provisions regulating the amount of toll leviable upon waggons and carts, depending upon the construction, breadth, and tire of their wheels. (3 Geo. IV. ss. 7, 9, &c.; 4 Geo. IV. c. 95, ss. 2, 5, &c.)

Trustees are enabled to erect toll-gates and toll-houses, the property in which is vested in them, and are required to put up at every toll-gate a table of the tolls leviable thereat, and to provide tickets denoting payment of toll to be delivered to persons paying the same. (9 Geo. IV. c. 77, s. 3, &c.; 3 Geo. IV. c. 126, ss. 37, 60; and 4 Geo. IV. c. 95, s. 28.) The remedies for the recovery of tolls, and the penalties for evading them are contained in 3 Geo. IV. c. 126, s. 39, &c.

The trustees of every turnpike-road have power to enter into compositions for any term not exceeding a year at a time, with any person for tolls payable at any toll-gates under their management. (4 Geo. IV. c. 95, s. 13.) They may also, though not empowered to do so by the local act, reduce the tolls leviable under the authority of the act, and advance them again to any amount not exceeding the rates authorised by the act; provided that where money has been borrowed on the credit of the tolls, no reduction shall be made without the consent of the persons entitled to five-sixths of the money due. (3 Geo. IV. c. 126, ss. 43, 44.) Trustees may also farm out the tolls, though no express power be given in the local act, for any term not exceeding three years at a time. (3 Geo. IV. c. 126, ss. 55, 57, 58; 4 Geo. IV. c. 95, s. 52, *et seq.*)

The General Turnpike Acts contain numerous provisions with respect to the appointment and duties of officers, the meetings and proceedings of trustees, the making of causeways, ditches, and drains, the erection of milestones, the watering of roads, the prevention and removal of annoyances and nuisances, the marking of carriages and regulations as to drivers, the apprehension of offenders, the recovery and application of penalties, the limitation of actions, &c.; all which general enactments have been made from time to time for the purpose of shortening and lessening the expense of private road bills, so that almost the only objects which now require to be attended to in the construction of road acts are the appointment of trustees, the number and situations of toll-gates, and the amounts of tolls.

(Wellbeloved, *On Highways*; Burn's *Justice of the Peace*, by D'Oyly and Williams, art. 'Highways (Turnpike).')

**TUTOR.** By the Roman law a male under the age of fourteen, and a female under the age of twelve, were called *Impubes*. A male who was *impubes* was incapable of doing any legal act by which he might be injured; his property was under the care of a tutor, who was so called from his office of defending or protecting (*tuendo*) the *impubes* in the transactions which were necessary for the administration of his property. The office of the tutor was *tutela*; and the *impubes*, who with respect to his tutor was called *pupillus*, was said to be in *tutela*, in tutelage. The tutor's business was to manage the property of his *pupillus*, and to add to his acts the legal sanction (*auctoritas*). The tutor's office as tutor was confined to the property of his *pupillus*, who, as to his person, was under the care (*custodia*) of his mother, if he had one; if not, we must suppose that the tutor would sometimes have the care of his person also. When the *pupillus* attained the age of puberty, he had the capacity of contracting marriage, and of doing other legal acts, and was freed from the control of his tutor. But though the law gave full legal capacity to the *pupillus* on his attaining puberty, it still gave him some further protection until

he was twenty-five years of age. [**CURATOR.**]

A father could appoint by testament a tutor for his male children who were *impubes* and in his power; he could also appoint a tutor for females who were in his power, even if they had attained puberty. He could also appoint a tutor for the wife of a son, who was in his power, and for his grandchildren, unless by his death they should come into the power of their father. A man could also appoint a tutor for his wife, who was in *manu*, for she stood to him in the legal relation of a daughter; and he could also give her the power of choosing a tutor. The origin of this testamentary power was probably immemorial custom, which was confirmed by the Twelve Tables. Tutors thus appointed were called *dativi*: those who were chosen by a wife under a power given by the husband were *tutores optivi*. If a testator appointed no tutor, the *tutela* was given to the nearest *agnati* by the Twelve Tables: such *tutores* were *legitimi*. If there were no *agnati*, the *tutela* belonged to the *Gentiles* so long as that part of the law (*Jus Gentilitium*) remained in force. When there was no person appointed tutor, and no *legitimus tutor* existed, a tutor was appointed for persons at Rome under the provisions of a *Lex Atilia*, and for persons in the provinces under the provisions of a *Lex Julia et Titia*.

Though a *pupillus* could not do any legal act which should be to his injury, he could enter into contracts which were for his benefit. The tutor's office was defined to consist in doing the necessary acts for the *pupillus*, and interposing or adding the legal authority to his proper acts (*negotia gerere et auctoritatem interponere*: Ulpian *Frag.*, tit. xi., s. 25.) The doing of the necessary acts applied to the case of the *pupillus* being *infans*, that is, under seven years of age, absent, or *lunatic* (*furius*). When the *pupillus* ceased to be *infans*, he could do many acts himself, and the *auctoritas* of the tutor was only necessary to make them legal acts.

A tutor might be removed from his office if he misconducted himself in it.

The pupillus had also an action against him for mismanagement of his property. The tutor was allowed all proper costs and expenses incurred by him in the management of the affairs of the pupillus; and he could recover them by action. Security was required by the praetor from a tutor for the due management of the affairs of a pupillus, unless he was a testamentary tutor, for such tutor was chosen by the testator, and, generally, unless he was appointed by a magistratus, for in such case he had been selected as a proper person.

The tutela of women who were puberes was a peculiar Roman institution, founded on the maxim that a woman could do nothing without the auctoritas of a tutor. But there was this difference between the tutela of pupilli and of women who were puberes: in the case of pupilli the tutor both did the necessary acts, particularly when the pupillus was infans, and gave his auctoritas; in the case of women who were puberes, the tutor only gave his auctoritas.

The Vestal virgins, in virtue of their office, were exempted from tutela. Both libertinae and ingenuae were exempted from it by acquiring the Jus Liberorum, which was conferred by the Lex Julia et Papia Poppaea on women who had a certain number of children. The tutela of a woman was terminated by a marriage by which she came in manum viri; and also by other means.

A woman had no right of action against her tutor as such, for he did not do any act in the administration of her property: he only gave to her acts their legal validity by his auctoritas.

The subject of the Roman tutela is one of considerable extent, and in the case of women it involves some difficult considerations.

TWELVE TABLES. [ROMAN LAW.]

TYRANNY. [TYRANT.]

TYRANT. The words tyrant and tyranny come respectively from the Greek *tyrannos*, *tyrannis* (τύραννος, τυραννίς) through the Latin. The earliest use of the word tyrannus is perhaps in the Homeric hymn to Ares (Mars). It is used by Herodotus and Thucydides, to signify a person who possessed sovereign power

and owed it to usurpation, or who derived it from a person who had obtained such power by usurpation, and who maintained it by force. Pisistratus, who usurped the supreme power at Athens, B.C. 560, was succeeded in it by his eldest son Hippias. A Greek tyrant who obtained sovereign power was a monarch in the proper sense of that term. [MONARCH.] If he acquired a power which was somewhat less than sovereign, he was not monarch; but in either case he would perhaps be called tyrannus; and accordingly the word does not express with accuracy the degree of political power, but it rather expresses the mode of acquisition, or refers to its originally illegal origin. The word, as used by the older Greek writers, did not carry with it any notion of blame: it simply denoted a person possessed of such political power as above mentioned, whether he used it well or ill. Many so-called tyrants were popular, and were men of letters, and patrons of literature and art. They might appropriately be called kings or princes in the modern acceptance of those terms, except perhaps that the uncertainty of their tenure of power and the want of a recognised hereditary succession in the tyranny, or a regular mode of succeeding to it, would render the application of any modern name inappropriate.

In some passages in Herodotus (iii. 80, &c.; vi. 23, &c.; vii. 165) the words monarch and tyrant are used as synonymes to express an individual who possessed sovereign power; and in one instance at least, vi. 23, 24) he calls the same person king (βασιλεύς) and monarch (μουνάρχος). Aristotle (*Polit.* iii. 7), after stating that a polity or government must either be in the hands of one or of a few, or of the many, adds that we are accustomed to call a monarchy which has regard to the interests of all members of the state a kingship (βασιλεία); and that a monarchy which has regard only to the interests of the monarch is a tyranny. In the case of Miltiades, who became tyrant of the Thracian Chersonesus, Nepos (*Miltiad.*) remarks that "all persons are considered and called tyranni who enjoy lasting power in a state which has once been free." This definition seems to express pretty clearly the old Greek notion of a

tyrant, but it leaves out of consideration the mode in which the power was acquired. Nepos remarks that Miltiades was called "Tyrannus sed justus," "tyrant, but tyrant in constitutional form" (not *just*), for he had been elected by the people. Accordingly, he says in another place, he had the dignity or rank of king without the name. This is consistent with Herodotus (vi. 36), who says that the people made Miltiades tyrant (τύραννον κατεστήσαντο).

Few of the Greek tyrannies lasted long, and the conduct of those who held this power was generally such as to attach in the course of time an odious signification to the word tyrant; but it does not exactly appear when this change in the signification of the word was introduced. Many of the old Greek tyrannies were abolished in part by the influence of Sparta, the constitution of which was hostile both to monarchy and democracy. But we read of tyrannies so called among the Greeks in the time of Philip and Demosthenes. It was, according to the expression of Isocrates, one of the great merits of Evagoras, tyrant of Cyprus, that he raised himself from a private station to the rank of tyrant (τύραννος), which he expresses in another place as the acquisition of a kingship. (*Evag. Encom.*, c. 25, 26.)

The Roman writers often use tyrannus as simply equivalent to king, especially the poets. Cicero couples dominus and tyrannus, thereby intending to use tyrannus in a bad sense, which was perhaps the more common acceptation of the word among the Romans in his time. Seneca seems to refer to the original sense of tyrannus when he says, "A tyrant is to be distinguished from a king (rex) by his conduct, and not by the name: for Dionysius the elder (who was called a tyrant) was a better man than many kings; and Lucius Sulla may be appropriately called a tyrant, for he only ceased from slaughtering when he had no more enemies to kill." (*Facciol., Lex.*, "Tyrannus.") According to this, a man might be called tyrant without being a cruel governor, for there were instances of persons so called who had used their power with moderation; and yet a man who had not the title of

tyrant might be called tyrant on account of his cruelty. It seems as if Seneca was trying to distinguish the popular use of tyrant in his time from its earlier historical signification. Trebellius Pollio has written the 'History of the Thirty Tyrants' who sprung up in the Roman empire in the time of Gallienus and Valerian. These so-called tyrants were not more tyrannical, in the modern sense of the term, than many Roman emperors.

The use of the modern words tyrant, tyranny, tyrannical, has been as vague as that of most other political terms. The term tyrant is properly limited to the government of one man who is sovereign, and the popular application of the term expresses disapprobation of his conduct. Aristotle's definition of tyranny would apply well enough to a modern tyrant: he is a sovereign who looks only to his own interest, or what he considers his own interest, and cares not what he does in order to accomplish his objects. But if he were a wise sovereign, and administered the state solely with a view to his real interest, that would be found in the main to coincide with the interest of the people, and he would not be called a tyrant, though perhaps he would come within Aristotle's definition. But Aristotle's language, though apparently precise, is not so; and he means by a tyrant administering the state for his own interest, that he also administers it to the detriment of the people. As the mass judge of things by their results, a sovereign would now be called tyrannical whose administration should render his people unhappy; at least he would run great risk of having this odious epithet applied to him, whatever was the goodness of his intentions, if he failed to satisfy the people. The word tyrannical is now often applied to acts of governments which are not monarchies; but this is an improper use of the word. We may say that the laws enacted by the sovereign power in Great Britain are sometimes impolitic, unwise, or injurious to the state generally; they may also be sometimes called oppressive; but they cannot with propriety be called tyrannical, though such an expression may be and often is used in the vulgar sense of characterising a law which for some rea-

sou the person who uses the term does not like.

## U.

**UDAL TENURE.** The Norwegian term 'Udal,' or 'odel,' appears to be the same as the German 'adel,' or 'noble.' Tenure is an improper name as applied to Udal land, for the land so called in Norway is not held by any tenure, but is free from all services. There is neither superior nor vassal, nor any of the consequences of such feudal relation as exists in many countries in Europe. (Laing's *Norway*, p. 205.)

**UMPIRE.** [ARBITRATION.]

**UNDERWRITER.** [SHIPS, p. 706.]

**UNFUNDED DEBT.** Exchequer bills form the principal part of the unfunded public debt. These bills are issued under the authority of parliament for sums varying from 100*l.* to 1000*l.*, and bear interest. They were first issued in the reign of William III.; and although their amount has since varied greatly at different times, the convenience which they afford to individuals and their advantage to the public have been such as to cause their constant issue. Their convenience to individuals arises from the circumstance of their passing from hand to hand without the necessity of making a formal transfer, of their bearing interest, and of their not being subject to such violent fluctuations as sometimes occur in the prices of the funded debt. This comparative steadiness in value is caused by the option periodically given to the holders to be paid their amount at par, or to exchange them for new bills to which the same advantage is extended; besides this, when a certain limited period has elapsed from the date of their first issue, they may be paid to the government at par in discharge of duties and taxes. The amount of premium that may have been paid at the time of purchase is consequently all that the holder of an exchequer bill risks in return for the interest which accrues during the time that it remains in his possession. The advantage to the public consists in the lower rate of interest which they carry compared with the permanent or funded debt of the na-

tion, to which, however, they must in this respect bear some certain proportion. When the price of the public funds is high, the interest upon exchequer bills will be low; and if the funds should fall in price so as to afford a much more profitable investment than exchequer bills, the rate of interest upon these must be raised in order to prevent their payment into the exchequer in discharge of duties: a thing which would embarrass the financial operations of government. When first issued in the reign of William III., the interest borne by exchequer bills was 5*d.* per 100*l.* per diem, being at the rate of 7*l.* 12*s.* 1*d.* per cent. per annum. In the same reign the interest was afterwards lowered to 4*d.* per 100*l.* per diem, or 6*l.* 1*s.* 8*d.* per cent. per annum; and in the following reign the rate was still farther reduced to 2*d.* per diem, or 3*l.* 0*s.* 10*d.* per cent. per annum. During the greater part of the war from 1793 to 1814, the rate of interest upon these securities was fixed at 3½*d.* per cent. per diem, or 5*l.* 6*s.* 5½*d.* per cent. per annum. Since the last-mentioned year the rate has been progressively reduced to 2½*d.*, 2*d.*, and 1½*d.* per 100*l.* per diem, at which last rate they were in the market at the time of the derangement of the currency which was experienced in the beginning of 1837. Under these circumstances, it was considered important as far as possible to relieve the Bank of England, by which establishment a very large proportion of these securities were then held, and to place it in the most favourable position for affording relief to the commercial classes; and accordingly the rate of interest upon exchequer bills was raised to 2½*d.* per cent. per diem. The last exchequer bills which were issued (in June, 1846) bore interest at 1¾*d.* per 100*l.* per day.

In periods of commercial pressure, advances have been made to merchants, upon the security of goods, by the issue of exchequer bills. A more permanent occasion for their issue, apart from the immediate wants of the government, has been the desire of aiding individuals or private associations in the prosecution of works of public utility, such as canals, roads, &c. In these cases the rate of interest charged to the borrowers is some-

what greater than that borne by the bills, and the difference has been applied to defray the expense of management on the part of the public.

The amount of exchequer bills "outstanding and unprovided for" at the end of each of the under-mentioned years was as follows:—

	£.
1836 . . .	28,155,150
1838 . . .	24,026,050
1840 . . .	21,626,350
1842 . . .	18,182,100
1844 . . .	18,404,500

UNIFORMITY, ACT OF. [BENEFICE, p. 340.]

UNIGENITUS BULL. [BULLS, PAPAL.]

UNION, IRELAND, SCOTLAND. [COMMONS, HOUSE OF, pp. 584, 590; PARLIAMENT, p. 455.]

UNITED STATES OF NORTH AMERICA, *Government of*. The United States, at the time of the formation of the General or Federal government in 1787, as well as at the time of their separation from Great Britain, 1776, consisted of thirteen distinct political communities,—Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia. The number is now increased to twenty-seven by the successive additions of the following States: Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Arkansas, Michigan, and Florida. In the year 1845 Texas was admitted into the Union as a State and member thereof.

They formed a Federal Government for defence from foreign aggression, and tranquillity at home; to encourage and protect commerce; and for a few objects of internal legislation in which uniformity among the States was desirable, and an obvious and direct common interest existed. To the separate States was left the legislation which concerns the law of property, the punishment of offences, the administration of justice, and the exercise of all powers over the territory and the citizens except the few which have been

either expressly withdrawn from the States, or delegated to the General government.

Both the General and State governments are essentially democratic. In both it is assumed that the interest of the majority is the proper end of government, and that the wishes of the majority truly indicate that interest.

By the written instrument called the Constitution of the United States, the power of the General government is divided into three branches; the legislative, executive, and judicial.

The legislative power is vested in two Houses. One, called the House of Representatives, is chosen every second year by those whom the laws of each State make legal voters. The number of representatives is not fixed, but has gradually increased from 65, in 1789, when the constitution went into operation, to 224 and two delegates. The two delegates are for the territories of Wisconsin and Iowa respectively. The representatives must be apportioned among the States according to their population, deducting two-fifths of the slaves in the estimate; and for the purpose of correcting the inequality of distribution arising from the variations in the relative numbers of the States, a census of the inhabitants is to be taken every ten years, at which time a new apportionment takes place, and a new ratio of population to each representative may be then also adopted, or the former one be continued. The act of Congress of 1842 declares that there shall be "one representative for every 70,080 persons in each State, and one additional representative for each State, having a fraction greater than one moiety of the said ratio, computed according to the rule prescribed by the constitution of the United States."

The Senate consists of two members from each State, chosen by its legislature, and consequently the whole number is now 54. One-third of the members is elected every second year, so that each member holds his seat for six years. In both houses the members are re-eligible.

All acts of legislation require the concurrence of both Houses, which constitute the Congress of the United States. They

have the power of levying taxes of every kind for all national objects pursuant to the powers given them by the constitution; of regulating commerce, foreign and domestic; of coining money; fixing the standard of weights and measures; establishing post-offices and post roads; prescribing a uniform rule of naturalization, and a uniform bankrupt law; creating and supporting an army and navy; of declaring war; defining and punishing treason, piracy, counterfeiting, and other offences arising under the constitution and acts of Congress; exercising exclusive legislation in the district of Columbia in which Washington, the seat of the General Government, is situated, and in forts, arsenals, dockyards, and all the territories belonging to the General Government; and the power of admitting new States into the Union.

The Congress is, by the same instrument, prohibited from laying any tax upon exports; from giving a preference to the ports of one State over those of another; from laying any direct tax except according to the number of inhabitants in each State who are represented in Congress; from suspending the writ of *habeas corpus*, except in case of rebellion or invasion; from passing any bill of attainder or *ex post facto* law; from granting, or permitting to be granted, any title of nobility; or from passing any law to restrict the freedom of religion, of speech, or the press.

Congress must assemble at least once in every year, which of late has been on the first Monday in December. The members of both Houses receive eight dollars for each day's attendance on Congress, and also for every 20 miles which they must travel to the seat of Government at Washington, and in their return home.

The powers of this body to give special encouragement to manufactures, to make roads and canals, to establish banks and other corporations, and to exercise some other legislative functions, are contested points in the construction of the federal constitution; and these questions often furnish the real or ostensible grounds of dispute between political parties.

Under the power to give special en-

couragement to manufactures, the Congress has passed acts which lay duties and imposts on the importation of foreign commodities, and these duties and imposts have been laid not merely for the purposes of revenue, but for the protection of domestic manufactures. Such duties for the protection of domestic manufactures are described in the ordinance of the Carolina Convention (about fourteen years ago) as "bounties to classes and individuals engaged in particular employments at the expense and to the injury and oppression of other classes and individuals." The object of the Carolina Convention was to *nullify* the revenue laws of the United States; and the verb *nullify* gave birth to the new word Nullification. Those who maintained this doctrine maintained that a State, which is a member of the Federal Union, can *nullify* certain acts of the General Government. The general doctrine of nullification was laid down in the following terms: "A State has a right in her sovereign capacity in Convention to declare an unconstitutional act of Congress to be null and void; and such declaration is obligatory on her citizens and conclusive against the General Government; which would have no right to enforce its construction of its powers against that of the State." This doctrine of Nullification was much discussed at the time in the United States. The objections to it, and the difficulty or rather impossibility of the process which the nullifiers of Carolina proposed for the purpose of getting rid of the revenue laws of the United States, are shown in an article in the North American Review on Nullification (vol. 36, Jan. 1833).

The executive power is vested in a President, who is commander-in-chief of the army and navy, collects and disburses the revenue according to law, and makes treaties with foreign nations, but in the exercise of the treaty-making power, the concurrence of two-thirds of the senators present is required. He nominates and, with the advice and consent of the Senate, appoints ambassadors, other public ministers, and consuls, and judges of the Supreme court, and other inferior officers. He has also a qualified negative on the



laws enacted by the two Houses, which becomes absolute unless it is subsequently countervailed by two-thirds of each House. He is provided with a ready-furnished house, and his salary is 25,000 dollars. He is chosen by a determinate number of electors; the voters in each State elect as many electors as are equal to the members which such State sends to both Houses of Congress. Every State has its own electoral college, and all the colleges give their votes on the same day, and by ballot. The votes are sent sealed to the President of the Senate. If no person has a majority of the electoral votes, the election devolves upon the House of Representatives, when all the representatives of a State give but one vote. The president must be thirty-five years of age, and he is re-eligible for life, but the usage has been never to elect the same person for more than two terms of four years each.

The executive business is distributed among four departments; that of the state, of the treasury, of war, and of the navy; the four secretaries of which, with the attorney-general, reside at Washington, and compose the president's cabinet council.

The vice-president is chosen at the same time and in the same way as the president, to whose office, if vacated during the term for which he was elected, he succeeds. His only function, in the mean while, is to preside over the deliberations of the Senate, in which he has a casting vote, which is given when the votes of the senators are equal. His salary is 5000 dollars.

The judicial power is vested by the constitution in a supreme court, and such inferior tribunals as Congress may from time to time establish. The supreme court consists of a chief-justice and eight associate justices. It sits in Washington, and has one session annually, which commences on the first Monday in December. The United States are divided into nine judicial circuits, in each of which a circuit court is held twice every year, for each State within the circuit, by a justice of the supreme court assigned to the circuit, and by the district judge of the State or district in which the court

sits. There are also thirty-four district courts, each State containing one, and some of them two; and each of these district courts has a separate judge, with some few exceptions, where one judge presides in several district courts in the same State. The several courts have either original or appellate jurisdiction in all admiralty cases, breaches of the revenue laws, controversies between citizens of different States, or citizens and foreigners; cases affecting ambassadors and other public ministers; and in all cases criminal or civil, in law or equity, arising under the constitution or the laws of the United States. The judges all hold their offices during good behaviour; and their salaries, which vary from 5000 to 1000 dollars, cannot be diminished even by the legislature, during their continuance in office. All public officers are removable by impeachment, and the Senate is the tribunal for the trial of impeachments; but the judgment in these cases extends no further than to removal from office.

The constitution provides for its own amendment, whenever such amendment shall be proposed by two-thirds of both Houses of Congress, or by a convention called on the application of two-thirds of the States: but in either case, the amendment must be ratified by three-fourths of the States to give it effect. There have been twelve amendments in fifty years: ten were made immediately after the constitution went into operation, and were meant to provide some additional security for the protection of the rights of individuals, or of the States; the eleventh was for restricting the liability of a State to be sued in a federal court; and the twelfth altered the mode of electing the president and vice-president.

This instrument also imposes express restrictions on the state governments. They cannot enter into a treaty or alliance; coin money; emit bills of credit;\* make anything but gold and silver a legal tender; pass a bill of attainder or *ex post*

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\* This phrase is borrowed from the Articles of Confederation of the old Congress. The paper money issued by that body was thus designated

*facto* law; impair the obligation of contracts; grant any title of nobility; lay a duty either on imports or exports; nor can they, without the consent of Congress, enter into a compact with another State; keep troops or ships of war in time of peace; nor engage in war, except in case of invasion or of similar urgency.

The State governments, with a few great features in common, have great diversities in their laws, and in their written constitutions. In all of them, the legislative, executive, and judicial powers are separate. In all the legislature consists of two branches; one usually called the senate, and a more numerous branch, which is variously designated.

The time for which the senators are elected varies from one to five years. In the more numerous and popular branch the members are elected annually, except in South Carolina, Tennessee, and Missouri, where they are elected for two years. The number of members in the popular branch varies considerably. The number of the senate is usually from about one-fourth to one-half the number of the other branch.

In all the States the executive power is vested in a governor, who, in some of the States, is assisted by a council. In some he has the power of appointment to state offices; in others, merely the power of nominating persons to his council; but in most States, he has neither the one nor the other. He is chosen by the people in all the States, except in Maryland, Virginia, North and South Carolina, in which he is chosen by the legislature. His term of service varies in the different States from one to four years, and he is in some States re-eligible, and in others not.

The judicial systems are yet more various. In the greatest part the judges hold their offices during good behaviour. In the others they receive their appointment for a fixed term, varying from seven years to a single year. In New York, they retire from office when they reach the age of sixty. In some States they are appointed by the governor and council; and in others, by the legislature. In some they are removable only by impeachment; in others, on the vote of two-thirds of the legislature. In some, the

salaries are liberal; in others, very small. Some States have separate Chancery courts; whilst in others, the courts of Common Law exercise Equity jurisdiction. In some, the court of Last Resort exercises no other than appellate jurisdiction; in others, the judges of separate courts unite to form an Appellate court; and in others again, the judges, combined with the senate, form a special court of Appeals.

In fourteen of the States negro slavery has the sanction of the law. These are the twelve States lying south of Pennsylvania and the river Ohio, together with the States of Missouri and Arkansas. In the other thirteen, slavery either never had existence, or has been abolished, except as to those who were slaves at the time of the abolition.

The right of suffrage has various restrictions in the different States as to property, residence, and length of citizenship; but it is now no where limited to an interest in land. In all the States the votes are given by ballot, except in Virginia, Kentucky, and Arkansas, where they are given orally. In all, except Virginia, lands can be taken in execution for debt, in the same way as personal property. The common law of England is the law of every State, so far as it has not been changed by the legislature, except in Louisiana, where the laws of every description have been digested into one code.

The revenues of the several States vary according to their population and wealth. Some of them, by judicious expenditure on canals and other public improvements, by the proceeds of public lands, and other sources, have a sufficient revenue for the ordinary expenses of the government, without the aid of taxes. In general, however, a sum equal to the annual expenditure is raised by taxes within the year, in which case it rarely averages more than a dollar for each inhabitant, and sometimes it is not one-fourth of that sum. But besides the taxes paid into the state treasuries, the county courts of the state or other corporate bodies have the power of levying money for special local objects, as for making and repairing roads, for providing court-houses and

jails, for the support of schools, &c., the amount of which taxes sometimes equals, and even exceeds the State tax.

Besides the twenty-seven States which constitute the Federal Union, there are territories beyond their limits which are immediately subject to the general government, though they have no participation in its political power. Over these the legislative power of Congress is supreme; but it is so exercised as gradually to fit them for admission into the Union. At first they are administered by a governor, appointed by the federal executive. When, by the progress of the settlements, they are deemed fit for it, they are advanced to the second stage of their probation. Of late years, the rights of the second stage are conferred on the territories at the time of their creation. They are then allowed to elect their own local legislature—the executive power continuing as before—and to send a delegate to Congress, who has the privilege of speaking, but not of voting: and lastly, when their numbers justify it, and Congress approves, they are made States and are admitted into the Union, and become like the other States. There are now two of these territories in the second stage: Wisconsin and Iowa.

The revenue of the general government arises from the sale of public land, customs duties, and the post-office. The whole produce of the post-office department is absorbed by the expenditure in that department. The sale of public land has produced for many years a large revenue. During the three years preceding 1838 there were sold more than 38,000,000 acres, the purchase money of which was 48,175,160 dollars. But the excessive issues of the banks afforded both the temptation and the means to extensive speculations in these lands, and made the amount sold much greater than it had ever been before, or is likely to be again. The produce of the sales of public land was in 1838 less than  $4\frac{1}{2}$  millions of dollars; in 1839 less than  $6\frac{1}{2}$  millions; in 1840 less than 3 millions; in 1841 less than  $1\frac{1}{2}$  millions; in 1842 less than  $1\frac{1}{2}$  millions; in 1843 a little above 2 millions; and in 1844 also a little above 2 millions of dollars.

The public land consists *first* of the lands which, having been once national domain by purchase, have never been sold or ceded by the general government, and of which there are yet large bodies in most of the Western States, and in all the territories; and *secondly*, of those lands in the unsettled western territory, which have been more recently purchased of the Indians. The system adopted by Congress for disposing of these lands is well contrived to facilitate settlements, to prevent disputes about titles or boundaries, and to render extensive purchases by speculators impracticable. The lands are accurately surveyed by the government; and are then laid off into ranges of townships by true meridian lines. Each township is exactly six miles square, and contains of course 36 sections of a square mile each, which sections are again subdivided into four quarter sections, each of 160 acres, and sometimes into half-quarter and quarter-quarter sections. The space between these squares and the margin of a river, or Indian boundary, is laid off into the smaller parts of a section. When thus laid off, the lands are sold from time to time at public auction, provided they bring the minimum price, which is a dollar and a quarter per acre. Formerly the minimum price was two dollars, and the lands were sold partly on credit; but in 1820, to avoid the present inconvenience and future danger of thus placing the government in the delicate relation of creditor to so many of its citizens, Congress in 1820 reduced the minimum price, and abolished the credit. The public land to which the Indian title has been extinguished, and which was unsold on the 1st January, 1832, was 227,293,884 acres. The business of surveying and disposing of the public lands is managed by a general land-office at Washington, and numerous land-offices distributed among the western states and territories, all which are under the control of the Treasury department.

The customs duties are the chief source of revenue to the United States. The total revenue of the United States for the fiscal year ending June 30, 1844, was

a little more than thirty millions of dollars, with a balance in the Treasury of nearly  $10\frac{1}{2}$  millions on the 1st July, 1843. The expenditure for the year ending June 30, 1844, was near thirty-three millions, of which the war department cost above eight millions, and the navy department cost nearly six and a half millions of dollars.

(*Geography of America*, Library of Useful Knowledge; *American Almanac* for 1846.)

UNIVERSITIES are lay corporations, which, since the twelfth century, have had the charge of educating the members of the learned professions throughout Europe and the colonies founded by European states. The three oldest learned institutions to which the name University can with propriety be applied are those of Paris, Bologna, and Salerno.

It is impossible to fix a precise date at which the educational institutions of Paris can be said to have assumed the form and name of a university. As for the name (*universitas*), it was not confined in the middle ages to scientific bodies; it was used in a sense equivalent to our word *corporation*. [UNIVERSITY.] There were "universities of tailors" in those days. It was long before the name obtained its present limited acceptance. The school of Bologna was a '*universitas scholarium*,' that of Paris a '*universitas magistrorum*,' because the former was a corporation of students, the latter of teachers. The oldest printed statutes of the university of Bologna are called '*Statuta et Privilegia almae Universitatis Juristarum Gymnasii Bononiensis*;' and in some universities we find a '*universitas juristarum*' and a '*universitas artistarum*' side by side: from which it appears that '*universitas*' at one time approached nearly to the meaning of our word '*faculty*.' What we now term a university was designated indifferently '*schola*,' '*studium generale*,' or '*gymnasium*.' The term '*academia*' has also been sometimes applied to universities, though academy has now a different meaning.

The oldest document in which the designation '*universitas*' is applied to the university of Paris, is a decretal of Inno-

cent III., about the beginning of the thirteenth century. But as early as 1180 two decretals had been issued by Alexander III., the first of which ordained that in France no person should receive money for permission to teach. The glossa of Vicentinus says, that this prohibition was directed against the chancellor of the university of Paris; and the second decretal alluded to exemptions the then rector, Petrus Comestor, from the operation of the first; and much earlier than any legislative provisions of popes or kings we find the foundations of the university laid.

To almost every cathedral and monastery of Europe there had been, from a very early period, attached a school, in which all aspirants to priestly ordination, and such laymen as could afford it, were instructed in the *Trivium* and *Quadrivium*. It appears from the letters of Abelard (died 1142), and from other contemporary sources, that the poorer establishments intrusted the conduct of this school to one of their number called the Scholasticus; and that the wealthier bodies maintained a Scholasticus to instruct the junior pupils in grammar and philosophy, and a Theologus to instruct the more advanced in theology. About the time of Abelard the great concourse of students who flocked to the episcopal school of Paris appears to have rendered it necessary to assemble the two classes of pupils in different localities; the juniors were sent to the church of St. Julian, while the theologians remained in that of Notre Dame. All who had studied a certain time, and undergone certain trials, were entitled to be raised by the rector of the schools to the grade of teachers. This was done by three successive steps. The candidate was first raised to the rank of master, in which he acted for a year as assistant to a doctor (or teacher); then to the rank of baccalaureus, in which he taught for a year, under the superintendence of his doctor, pupils of his own; lastly, to the grade of independent doctor. The number of students rendered the profession of a teacher at Paris lucrative, and many from all nations embraced it. According to the custom of those unsettled times, they gradually

formed themselves into a kind of corporation for mutual support. The corporation consisted of the teachers of all the three grades, and stood under a rector elected by themselves. According to an agreement entered into in 1206, the rector was elected by the residents of the four nations—French, English or German, Picards, and Normans. Before this time, in 1200, Philip Augustus had confirmed the exclusive control of the rector over all students and teachers. The local separation of the artists from the theologians would have been of little consequence, but for the rapid progress which the Aristotelian philosophy made during and immediately after the life of Abelard. The speculations into which studious men were led by the writings of Aristotle necessarily led them to deal with topics which had hitherto been conceived to lie within the exclusive domain of theology. The consequences were frequent and bold attempts by individuals to modify the received doctrines of the church, clamours about heresy, persecutions, and counter-persecutions. All these contributed to bring about a tacit compromise between the professional theologians and the admirers of speculative philosophy: the former were left in possession of the pulpit and chairs of theology; the latter confined themselves ostensibly to literature and philosophy, and sought to avoid scandal by rarely overstepping the bounds of abstract inquiry. The progress of this tacit agreement may be traced in the writings of the learned from the time of Abelard down to that of Erasmus; under it grew up a class of literati, who may be called, although many of them took orders, secular scholars. It was the same incompatibility of the free spirit of speculative inquiry with the stability of a dogmatic theology which led to this compromise, that embittered the dispute about the claim of the mendicant orders to establish chairs of theology in the university of Paris about the middle of the thirteenth century. This controversy ended in the secession of the doctors of theology from the university, as it had for some time been called, and their incorporating themselves into a separate college or faculty. Their example was

followed not long after by the doctors of canon law and medicine, who formed themselves into separate faculties. These faculties consisted exclusively of the actually teaching doctors (*doctores regentes*) of these three branches of knowledge. The masters and bachelors remained members of the university proper, which, from the secession of the theologians, canonists, and doctors of medicine, came in time to be called the Faculty of the Artists. From this period the university consisted of seven bodies or sub-incorporations—the four nations under their procurators, and the three faculties under their deans. The rector was the head of the university; he was elected by the procurators of the old university; no doctor of theology, canon law, or medicine could be elected or take part in the election. At first the rector was chosen by the procurators, but latterly by four electors, specially elected by each nation for that purpose. The *Prevôt* of Paris (so long as that officer retained any authority) was the conservator of the royal privileges in the university; the bishops of Meaux, Beauvais, and Senlis, of the papal privileges. In respect to criminal jurisdiction, the university was immediately under the king, till A.D. 1200, when its members were transferred to the episcopal court of Paris: about the middle of the fifteenth century they were transferred to the Parliament of Paris. In regard to civil jurisdiction the University was originally under the bishop; in 1340 it was transferred to the court of the *Prevôt* of Paris; when the Chatelet succeeded to the judicial functions of the *prevôt*, the university was transferred to that court. The rector, with the procurators and deans, formed a court, which had jurisdiction in all complaints against teachers for incompetency or neglect of duty; and against students for disobedience to their teachers, the rector, or the discipline of the university, and in all cases between students, lodging-keepers, booksellers, stationers, &c. From the decisions of the rectorial court there was an appeal to the university, and from it to the Parliament of Paris. Each faculty (that of the artists included), had its own common school. In the faculty of canon-

ists there were six professors (or doctores regentes); the number in the other faculties varied. At an early period colleges were established within the University of Paris by private families or religious orders. Originally they were intended exclusively for poor scholars, who were to live in them subject to a certain discipline. By degrees, as more numerous and able teachers were employed in these colleges, they assumed the character of boarding-houses for all classes of students. In the fifteenth century the students who did not reside in any college had come to be regarded as exceptions from the general custom, and were nicknamed "martinets." The College of the Sorbonne (founded in 1250) was commonly regarded as identical with the theological faculty, because the members of the one were most frequently members of the other also. The promotions however continued to be made by the officers of the university, although the charge of education had been in a great measure engrossed by the colleges. Degrees were conferred in the faculties of theology, canon law, and medicine, by the deans, with the concurrence of the chancellor of the Cathedral of Notre Dame; in the faculty of artists, by the rector, with the concurrence either of the chancellor of Notre Dame or the chancellor of St. Geneviève.

The oldest authentic document relating to the university of Bologna is the privilege granted by the Emperor Frederick I., at Roncaglia, in November, 1158, to all who travel in pursuit of learning, in which the professors of law are mentioned in terms of high encomium. Bologna is not named in this instrument, but history mentions no other law-school as existing at that time. The contents of this privilege are two-fold: foreign scholars are declared to stand under the emperor's immediate protection, and a special jurisdiction (their teachers, or the bishop of the city) is constituted to judge in all complaints against them. It seems universally admitted that the earliest teacher of civil law at Bologna was Irnerius: he is said to have been originally a teacher of philosophy, but to have acquired such a knowledge of Justinian's compilations

that he was invited by the Countess Matilda to expound its doctrines from the professional chair. Matilda died in 1115: between 1113 and 1115 the name of Irnerius appears in a legal document as "causidicus" for the countess. From 1116 to 1118 he appears to have been employed in weighty missions by the Emperor Henry V. Under the Emperor Frederick "the four doctors" of Bologna were selected to investigate the prerogative of the crown, in order to determine how far the privileges claimed by the Lombard towns were usurpations. These circumstances show that the reputation for legal knowledge acquired by the law-teachers of Bologna had proved an introduction to state employments, honours, and emoluments; and this attracted to the city in which they taught a large concourse of the most intelligent and aspiring minds of Europe. The reputation of having studied at Bologna was a passport to office throughout Christendom. The earliest statutes and charters of the University of Bologna are compacts entered into by the students for mutual support and assistance, and immunities granted them by the popes and emperors. The university of Paris was originally an association of teachers; it was a corporation of graduates: the university of Bologna was originally an association of students who had repaired from distant lands to avail themselves of the instruction of a few celebrated teachers; it was a corporation of students. Disputes between the magistrates of the city, and between the students and professors, which occurred about 1214, are the first occasions on which we hear of a rector. From the history of these controversies it appears that the students had previously been in the habit of electing the rector, and that the right was confirmed to them for the future. At first there was merely a school of law in Bologna, and the jurists constituted the university, or rather the two universities of the *Citramontani* and *Ultramontani*. In course of time teachers of philosophy and medicine settled in Bologna, and the scholars of each class attempted to form a university: their right to do so was successfully contested by the jurists in 1295, but in 1316 they were allowed to elect a

rector of their own. They called themselves "philosophi et medici," or "artistæ." In 1362 Innocent VI. founded a school of theology at Bologna. From this time therefore there were four universities in Bologna: two of law (which however were so intimately connected, that they are generally spoken of as one), one of medicine and philosophy, and one of theology. Each of these had its own independent constitution. That of the law university is best known, and agrees in its leading features with the others. The "universities" consisted of the foreign students, who were admitted upon the payment of twelve soldi entry-money, and obliged to renew annually their oath of obedience to the rector and the statutes of the university. The Bolognese students could neither hold offices in the university nor vote in its assemblies. The foreign students were divided into *Citramontani* and *Ultramontani*: the former were divided into seventeen nations, the latter into eighteen. The rector was chosen annually from among the students by his predecessor in office, the rector's council, and a number of electors chosen by the nations. A rector was taken from each nation in rotation. The council consisted of at least one representative of each nation: some had two. The university also elected annually a *syndic*, to act for them in courts of law; a notary; a *massarius*, or treasurer (chosen from among the town bankers); and two *bidelli*. The rector claimed exclusive jurisdiction in all civil cases in which one or both of the parties were students, and in criminal cases in which both were students. The professors were elected by the students, to whose body they were reckoned, and all whose privileges they enjoyed, except a vote at elections. They stood under the jurisdiction of the rector, who could fine or suspend them. The degree of Doctor was conferred by those who had previously obtained it: it was held to confer the privilege of teaching everywhere, the power of discipline over the doctor's own pupils, and the right to take part in the conferring of all the degrees. At first there were only doctors of civil law: the doctors of canon law appear later, and were for a long

time less respected. In the thirteenth century the university began to create doctors of medicine, of grammar, of philosophy and arts, and even of the notarial art. Any student who had studied five years might be licensed by the rector to expound a single title, or if he had studied six years, to expound a whole book of the *Pandects*. He was termed a *licentiate*; and after he had performed his task, he was declared a *baccalaureus*. Salaried professors appear in Bologna for the first time about 1279. The doctors taught in their own houses or in halls hired for the purpose: their method of tuition was by lectures, examinations, and disputations.

The history of the university of Salerno is much more obscure than the histories of the universities of Paris and Bologna. *Ordericus Vitalis*, whose annals close with the year 1141, speaks of Salerno as a place long eminent for its medical schools. Its most celebrated teacher, *Constantine of Carthage* (died 1087), was a privy councillor of *Louis Guiscard*. This school was still flourishing in 1224, when the university of Naples was established. All that can be inferred from these scanty notices of the school of Salerno is, that the scientific study of medicine was making rapid strides about the same time that law began to be more systematically studied, and philosophical and literary pursuits to be regarded as the profession of a class whose members might or might not be priests.

This sketch of the early constitution of the universities of Paris and Bologna will assist a person in acquiring a more exact notion of the original constitution of other universities.

The growth of universities throughout Europe was rapid. Before the Reformation they were established in Italy, France, the Germanic Empire, the Peninsula, Great Britain, and even among the Slavonic nations east of the Germans. There were numerous universities established in Italy previous to the year 1500, besides the three already named, within the limits of the Germanic Empire, which then extended over many provinces now incorporated into France, and over the Netherlands: in Great Bri-

tain; in Spain and Portugal; in Sweden at Upsala in 1476; and at Copenhagen in 1479.

In all of these institutions we recognise the leading features of Paris or Bologna. All of them, apart from the consideration of their academic character, are privileged corporations, with an independent jurisdiction more or less limited, and the power of making bye-laws. In most of them the division of the members of the corporation into nations prevails or did prevail. In all of them the faculties of philosophy (or arts), theology, law (civil and canon), and medicine, are more or less fully developed. Some contain within them all the faculties; some only two or more. Almost all have a faculty of arts, which, even where it is politically the most powerful (as in the university of Paris), is regarded as in a great measure preparatory to, and therefore in its scientific character inferior to the others.

The universities founded after the Reformation adopted the great outlines of the organization of their predecessors: the political incorporation, the privileged jurisdiction and power of making bye-laws, the faculties and modes of conferring degrees which custom had established. But the altered circumstances of society modified considerably their external relations. The same political power was not conceded to universities that had formerly been given to them. The old were restricted in their privileges; the new never received them. The protracted strife between the Romish and Protestant churches also had its effect: universities, though no longer allowed to lay down the law, were cherished as advocates of a party. Roman Catholic and Protestant universities were erected to do battle for their respective creeds. Lastly, other sciences had their practical utility recognised, in the same way as the sciences of law and medicine had theirs at an earlier period. The applications of mathematical science to the purposes of war and navigation had given an impetus to their cultivation: these new practical pursuits never produced a new faculty, but they lent greater importance to the miscellaneous faculty known as the Faculty of Arts. The

number of universities founded in Europe, from the time of the Reformation down to the French Revolution was considerable. They were established in Italy, France, Germany, in the United Provinces of Holland, in Scotland, Ireland (Dublin), in Spain and Portugal, and elsewhere.

Many events concurred during this period to lower universities in the public estimation. The extension of elementary and secondary schools had raised the standard of education among the classes which did not receive a university education. The invention of printing had operated in the same direction. The diminished privileges and restricted jurisdiction of universities had brought them to be regarded merely as schools of a higher order. The increasing number of learned societies raised up a body of non-academical literati, hostile in many instances to the academical; and the public, looking only to the transactions of these societies, forgot that their members were indebted for their training to the universities. The presumptuous spirit of amateur dabblers in science undervalued these institutions; and, in the feverish spirit of innovation which occasioned or accompanied the French Revolution, they too were denounced. In France the old universities have entirely disappeared. In the rest of Europe, as soon as the storms of the Revolution were passed over, they revived; and adapting themselves more to the social necessities of the age, have in many instances started with increased energy on a fresh career of utility.

The present University system in France is peculiar: the expression "Royal University of France" was almost equivalent to that of "national system of education in France." The governing body is the council of public instruction, of which the minister of public instruction is the president. All educational institutions, from elementary schools upwards, are, with half-a-dozen exceptions, under the direction of this body. Under the councillors are inspectors-general of the university, whose office it is to examine all schools and colleges once a year. The educational functions discharged by uni-



versities in other nations of Europe are vested in twenty-six academies, each of which has a territory of two or more departments allotted to it. The twenty-six academies comprise forty-one royal colleges, and above six hundred professors or teachers. At the head of each academy are a rector, two inspectors, and a council: they have the superintendence over all the schools in their districts. The academy includes the faculties; but all the faculties are not organized in every academy, and some have none. There are six faculties of Roman Catholic theology,—at Aix, Bordeaux, Lyon, Paris, Rouen, Toulouse: and two of Protestant theology, one Lutheran, at Strasbourg, and one Calvinistic, at Montauban, under the academy of Toulouse. There are nine faculties of law,—at Aix, Caen, Dijon, Grenoble, Paris, Poitiers, Rennes, Strasbourg, and Toulouse. There are three faculties of medicine,—at Grenoble, Paris, and Montpellier, with seventeen secondary schools of medicine. And there are seven faculties of literature,—Paris, Strasbourg, Bordeaux, Toulouse, Caen, Dijon, and Besançon. The faculties consist of a variable number of professors, one of whom is dean, and a committee of whom examine candidates for degrees. The students sufficiently advanced to study the sciences taught by the faculties are instructed in royal colleges, and are classified according as they reside within or without the walls.

The universities of Great Britain are Oxford, Cambridge, Durham, London, St. Andrew's, Glasgow, Aberdeen, Edinburgh, Dublin. In Oxford and Cambridge the colleges have obtained a complete preponderance over the university, and the old university constitution is in practice changed. So great has been the change that many people, and even some learned judges, have erroneously conceived these two corporations as composed of a number of colleges something like a federal government, whereas the universities are distinct lay corporations, which confer degrees and have various powers: the colleges are properly boarding houses and eleemosynary foundations. [COLLEGE.] The earliest charter of privileges to the university of Oxford as a corpora-

tion is said to be the 28th of Henry III., and the first charter granted to the university of Cambridge as a corporation is said to be the 15th of Henry III. James I. in 1603, by diploma dated the 12th of March, granted to the universities of Oxford and Cambridge the power to send each two representatives to the House of Commons. The Dean and Chapter of Durham, by an act of chapter, 28th of April, 1831, established an academical institution in Durham in connection with the cathedral church, which by an act of parliament (2 & 3 Wm. IV.) entitled 'An Act to enable the Dean and Chapter of Durham to appropriate part of the property of their church to the establishment of a university in connection therewith for the advancement of learning,' was confirmed and endowed. In 1837 the university of Durham received a royal charter. The university of London received its first charter from William IV., which Queen Victoria revoked in the first year of her reign, and granted a new charter the 5th of December, 1837. The history of the establishment of this university is given at length in the 'Penny Cyclopædia,' UNIVERSITY COLLEGE, LONDON; and UNIVERSITY OF LONDON.

As in England and Scotland, the medical and legal professions are in the United States educated principally in distinct schools; and this is the case also in a great measure with the students of theology. Many of the colleges or universities contain only a faculty of arts.

According to the 'American Almanac' for 1846, there were 108 colleges in the United States; 29 medical schools, some of which are connected with colleges or universities; 34 theological schools; and 9 law schools. Most, if not all, of these are incorporated places, and all the colleges grant degrees. But many of these colleges are of very recent date, ill organized, and ill endowed. On the whole however, the endowments and character of the older colleges in the United States are such as show that the higher branches of learning and science are zealously pursued and honourably supported.

(Savigny, *Geschichte des Römischen Rechts im Mittelalter*. Ackermann, Lu-

*stitutiones Historiæ Medicinæ*; Balæus, *Historia Universitatis Parisiensis*; Pasquier, *Recherches de la France*; *Edinburgh Review*, June, 1831, art. 'English Universities—Oxford'; Meiners, *Geschichte der Entstehung und Entwicklung der hohen Schulen unsers Erdtheiles*; *Quarterly Journal of Education*; Balbi, *Abbrégé de Géographie*; *American Almanac* for 1846.)

**UNIVERSITY.** This word is the English form of the Latin *universitas*, which is often used by the best Latin writers. The adjective 'universus' signifies the whole of anything, as contrasted with its parts: the plural 'universi' also is often used to express an entire number of persons or things, as opposed to individual persons or things. The uses of the word *universitas* may be derived from the meaning of *universus*. *Universitas* is used by the Latin writers to express the whole of anything, as contrasted with its parts: thus Cicero speaks of all mankind as '*universitas generis humani*;' and he proceeds to instance individuals (*singuli*) as the ultimate elements of this *universitas*. It is not necessary to the notion of a *universitas* that all the elements should be alike; '*universitas rerum*' is Cicero's expression for the whole of things—for all things viewed as making one whole. The word *universitas* applies either to a number of things, or of persons, or of rights, viewed as a whole. The Roman jurists expressed by the term '*universitas honorum*' the whole of a property as contrasted with the parts (*singulæ res*) which composed it. Such a *universitas* might be the object of a universal succession. [SUCCESSION.]

Rights and duties are properly attached to individuals as their subjects: but a number of individuals may be viewed for certain legal purposes as one person or as a unity. Thus the notion of a number of persons forming a juristical person, or a *universitas*, obtained among the Romans, and *universitas* was a general name for various associations of individuals, who were also indicated by the names of *collegia* and *corpora*. The essential character of these *universitates* of persons, viewed as juristical persons, was the capacity of having and acquiring pro-

perty. The property, when had or acquired, might be applied to any purposes which the nature of the association required: but it was the capacity of the association to have and acquire, like an individual, that was the essential characteristic of the body as a *universitas*; and the purposes for which the property might be had or acquired were no more a part of the notion of a *universitas*, than the purposes for which an individual has or acquires property are part of his capacity to have or to acquire.

The universities or corporate bodies at Rome were very numerous. There were corporations of bakers, *publicani* or farmers of the revenue, of *scribae*, and others. The name was also applied in the sense above explained to *civitates*, *municipia*, and *respublicae*; and also to the component parts of them, as *curiae*, *vici*, *fora*, *conciliabula*, and *castella*.

From the Roman words *universitas*, *collegium*, *corpus*, are derived the terms university, college, and corporation of modern languages; and though these words have obtained modified significations in modern times, so as not to be indifferently applicable to the same things, they all agree in retaining the fundamental signification of the terms, whatever may have been superadded to them. There is now no university, college, or corporation which is not a juristical person in the sense above explained. Wherever these words are applied to any association of persons not stamped with this mark, it is an abuse of terms.

The word university, in its modern acceptance, has often been misunderstood. Its proper meaning is explained in this article; and the application of the term to associations of teachers or pupils is explained in the article **UNIVERSITIES**. (Savigny, *Geschichte des Heut. Röm. Rechts*, ii. 261, &c.; and i. 378, note n.)

**UNLAWFUL ASSEMBLY.** [RIOT; SEDITION.]

**USAGES.** [CUSTOMS; PRESCRIPTION.]

**USANCE.** [EXCHANGE, BILL OF.]

**USE.** A use, at common law, was a beneficial interest in land, distinct from the legal property therein. The origin of uses is derived by Gilbert (*Law of Uses*, 3) from a title under the civil law,

which allows of an usufructuary interest, distinct from the ownership of the thing itself. He says it was introduced by the clergy, who were masters of the civil law, and who, "when they were prohibited from taking anything in mortmain, after several evasions by purchasing lands of their own tenants, suffering recoveries, purchasing lands round the church and making them churchyards by bull from the pope, at last invented this way of conveying lands to others to their own use; and this being properly matter of equity, it met with a very favourable construction from the judge of the Chancery court, who was in those days commonly a clergyman. Thus this way of settlement began; but it more generally prevailed among all ranks and conditions of men by reason of the civil commotions between the houses of York and Lancaster, to secrete the possessions, and to preserve them to their issue, notwithstanding attainders; and hence began the limitation of uses with power of revocation." [MORTMAIN.] But whatever may have been the origin of uses, it is certain that the desire of effecting secret transfers of property without resorting to the public modes of conveyance of the common law, as well as the desire to dispose of property by devise, which the common law did not allow, led to an early adoption of the system.

The person who was entitled to the use was called the *cestui que use*. He had no means of maintaining his title to the use except by the writ of subpœna, whereby the person who had the legal estate in the land, the feoffee to uses, was bound to appear in Chancery, and was compelled to answer upon oath as to the confidence reposed in him.

A use was descendible, according to the rules of the common law respecting estates of inheritance; the courts of equity having in this case followed the maxim that *aquitas sequitur legem*. It was also alienable by deed, and devisable before the statute of wills, the courts of equity having favoured this method of evading the strictness of the common law, which allowed no transfer of land without livery of seisin. But the *cestui que use* had no legal ownership. The feoffee

was still complete owner of the land at law. He performed the feudal duties, his wife had dower, and his estate was subject to wardship, relief, &c. He might sell the lands, and forfeit them for treason or felony.

The system of uses having been found to produce many inconveniences, notwithstanding various statutes which had been passed from time to time to modify them, it was thought a remedy would be found by joining the possession to the use, or, as it is usually termed, transferring uses into possession. With this view the statute of 27 Hen. VIII. c. 10, commonly called the Statute of Uses, was passed, which enacted, that where any person or persons stood or were seised, or at any time thereafter should happen to be seised of any honours or other hereditaments to the use, confidence, or trust of any other person or persons, or of any body politic, by any manner of means whatsoever, it should be, that in every such case all such person and persons, and bodies politic, that had, or thereafter should have, any such use, confidence, or trust, in fee simple, fee tail for term of life, or for years or otherwise, or any use confidence, or trust, in remainder or reverter, should, from thenceforth, stand and be seised, deemed, and adjudged in lawful seisin, estate, and possession of, and in the same honours and hereditaments with their appurtenances, to all intents, constructions, and purposes in the law, and in all such like estates as they had or should have in use, trust, or confidence of or in the same; and that the estate, title, right, and possession that was in such person or persons that were or thereafter should be seised of any lands, tenements, or hereditaments, to the use, confidence, or trust of any such person or persons, or of any body politic, should be from thenceforth clearly deemed and adjudged to be in him or them that had or should have such use, confidence, or trust, after such quality, manner, form, and condition as they had before in or to the use, confidence, or trust that was in them.

The statute then provides for the case of several persons being jointly seised to the use of any of them; and contains

two savings: 1st, To all persons (other than persons who were seised or thereafter should be seised of any lands, tenements, or hereditaments, to any use, confidence or trust) all such right, title, entry, interest, possession, writs, and action as they had or might have had before the making of the Act; and 2nd, To all persons seised to any use, all such former rights as they had to their own proper use in, or to any manors or hereditaments whereof they should be seised to any other use.

Probably the legislature intended by this act to put an end to the system of uses; nevertheless, it was soon settled by the courts that it had not that effect, but that uses might still as formerly be raised, upon which the statute would instantly operate. However, some modifications of the system were introduced. Before the statute, a mere agreement for sale, without words of inheritance, was sufficient to pass the equitable fee to the vendee; but, by the 27 Hen. VIII. c. 16, it was enacted that no contract should transfer the legal estate in the fee, unless it were made by deed enrolled. And it was resolved by the judges that words of inheritance were necessary to pass the fee at law. Indeed, no contract importing a future conveyance, even though made by deed enrolled, and containing words of inheritance, would now be held to transfer the legal estate under the Statute of Uses, though it would entitle the vendee in equity to call for a regular conveyance. A further modification of the system of uses was introduced by the seventh section of the Statute of Frauds (29 Car. II. c. 3), which required that all declarations of trusts or confidences of lands, tenements, or hereditaments (which might formerly have been created by parol), should be manifested and proved by writing, signed by the party by whom it is declared. [STATUTE OF FRAUDS.]

In order to raise a use which the statute will turn into a possession, it is necessary that there should be, 1st, one person seised to the use of another, *in esse*; 2nd, a use *in esse*, limited in possession, reversion, or remainder. The use may be either *express*, as where lands are conveyed to A and his heirs in trust for B and

his heirs, or in confidence that he and they shall take the profits, or where a vendee, for a valuable consideration, conveys by bargain and sale enrolled, in both which cases the legal estate vests in the grantee or bargainee by the statute; or it may be *implied*, as where a feoffment is made without consideration or declaration of the use, in which case the use results, and the estate returns to the grantor. It was settled by the courts of law that the statute could not operate except upon an estate of freehold, and that therefore copyhold and leasehold estates are not affected by it. A term of years may of course be created out of a freehold estate by way of use, but when once subsisting cannot be conveyed to uses. If, therefore, a term were assigned to A to the use of B, the legal estate would remain in A, who however would be considered in equity as a trustee for B.

By the operation of the Statute of Uses, a man may, through the medium of a feoffee or releasee, make a conveyance to his wife, which he could not do at common law (Litt., s. 168; Co. Litt., 112 a.). In like manner a married woman, having a power to limit a use, may appoint to her husband.

At common law a man could not limit a remainder to himself, nor could he limit it to his heirs so as to make them take as purchasers, without departing with the whole fee simple out of his person (Dyer, 156 a, fol. 24; Co. Litt., 22 b.), but he may do so by means of a conveyance operating under the Statute of Uses.

On the system of uses and the Statute of Uses has been founded the system of conveying property in land, and making settlements of landed property in land, which is now in use in England; a system composed of numerous artificial rules and deductions, but, on the whole, well adapted to secure the numerous purposes which the owner of land in fee simple wishes to accomplish in disposing of his property.

It is a rule of the common law that joint tenants cannot take at different periods. (1 Co., 160, b. 2.) Again, by its rules a fee could not be limited upon a fee; a freehold could not be made to commence *in futuro*, and an estate could not

be made to cease by matter *ex post facto*, so as to let in another limitation before the expiration of the former. [REMAINDER.] But limitations of the above kinds may be made to take effect under the Statute of Uses. Such limitations are called *shifting or secondary and springing uses*; and *future or contingent uses*.

As the Statute of Uses was made previously to the Statute of Wills (32 & 34 Hen. VIII.), it has been questioned whether the Statute of Uses can be held to apply to wills; but as, before the statute, devises of the use were permitted, so, since the statute, the courts have uniformly held that, where a devise is made to a use, the intention of the testator must be taken to be that the devisee of the use should have the legal estate.

By a construction of the Statute of Uses, adopted soon after it was passed, it was settled that a use could not be limited on a use; that is, that the statute would operate on the first declaration of use only: so that if, by bargain and sale, a use in lands were limited to A and his heirs in trust or to the use of B and his heirs, the statute would vest the legal estate in A without adverting to the use declared in favour of B. The Court of Chancery availed itself of this construction to revive Uses under the name of Trusts; and it was determined that A was, in the case above mentioned, a trustee for B of the beneficial interest in the land.

The subject of this article is briefly treated in Sanders, "On Uses and Trusts;" and in Gilbert, "On Uses," by Sugden.

**USES, CHARITABLE AND SUPERSTITIOUS.** The term 'Charitable use' has a very extensive legal meaning, and includes dispositions of property which are not in ordinary language described as charitable, but which are so called with reference to the purposes enumerated in the statute 43 Eliz. c. 4, or such as are considered analogous to them. That statute enacted that the Commissioners thereby empowered should inquire as to the lands, &c. given by well-disposed people "for relief of aged, impotent, and poor people; for maintenance of sick and maimed soldiers and mariners; schools of learning, free-schools, and

scholars in universities; for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; for education and preferment of orphans; for or towards the relief, stock, or maintenance of houses of correction; for marriage of poor maids; for supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; and for relief or redemption of prisoners and captives, and for aid or ease of any poor inhabitants concerning payment of fifteens setting out of soldiers, and other taxes.' The term 'Charitable use' is applicable only to gifts for what are called public charities, the objects of which are not particular individuals, but a class or the public in general.

If lands, tenements, rents, goods, or chattels were given, secured, or appointed for or towards any of the following purposes: for the maintenance of a priest or other man to pray for the soul of any dead man in such a church or elsewhere to have or maintain perpetual obits, lamps, torches, &c., to be used at certain times to help to save the souls of men out of purgatory,—these or the like purposes are declared to be Superstitious Uses by 1st Edward VI. c. 14. There is no statute making superstitious uses void generally, but it is now an established rule of law that gifts for superstitious uses generally are void, and many gifts have by the courts been declared to be for superstitious uses which are not such in the ordinary acceptation of the term, but are either expressly prohibited by the law or contrary to its policy. A change in the doctrine of superstitious uses has been made by the 2 & 3 Wm. IV. c. 115, which puts persons professing the Roman Catholic religion upon the same footing, with respect to their schools, places for religious worship, education and charitable purposes, as Protestant dissenters; with respect to whom the doctrine of the court is, that it will administer a fund to maintain a society of Protestant dissenters promoting no doctrine contrary to law, though at variance with that of the Established Church. The 2 & 3 Wm. IV. c. 115, is retrospective. (2 M. and K., 225.) Though it is now lawful to give money by will for Roman Catholic

schools or for promoting the Roman Catholic religion, it is not lawful to give money for prayers and masses for the soul of a testator.

The Court of Chancery has a general jurisdiction over property given for charitable purposes, and the regular mode in which matters relating to charities are brought before it, is by information by the attorney-general on behalf of the crown.

The Court of Chancery adopts a very liberal construction of gifts for charitable purposes; and there are numerous cases of gifts for objects not within the letter of the statute of Elizabeth which have been considered to be within the equitable meaning of the word charity as understood in that court, and have been administered accordingly. And when a gift is made for charity generally, without any purpose specified, if the gift be to trustees, the court will order a scheme to be prepared for the direction of the trustees in the administration of the trust; and where the declared object is charity, but no trust has been created, the crown by sign manual disposes of the property, and declares the particular charitable purposes to which it is to be applied. Where the particular objects which the donor had in view fail, either wholly or in part, the court adopts what is called the principle of *cy-pres*, that is, it directs the property to be applied to worthy objects in its judgment most nearly resembling those which have failed, or when more than one charity has been named by the donor, to such of the others as are still subsisting. When the revenue of the property increases from any cause, the increase goes to the charity, if it appear to have been the intention of the donor that the whole should be disposed of for the benefit of the charity. Several difficult questions have arisen as to the disposition of increased funds.

When property is given to a superstitious use, or for a charitable purpose which cannot legally be executed, the court of chancery will apply it to some other charity. "Whenever a testator is disposed to be charitable in his own way and upon his own principles, we are not content with disappointing his intention,

if disapproved by us: but we make him charitable in our way and on our principles. If once we discover in him any charitable intention, that is supposed to be so liberal as to take in objects not only not within his intention, but wholly adverse to it." (Sir William Grant, 7 Ves., 495.) If the superstitious use be one which the court considers charitable, the fund goes to the king to be disposed of to such charitable uses as he shall direct by sign-manual: if the use be not charitable, the gift is merely void, and the property will go to the donor's representative. (2 M. and K., 684.)

The regular mode of proceeding in cases of abuse of charitable funds is by way of information in the name of the attorney-general on behalf of the crown. In informations with respect to charities the Court of Chancery always requires a person to be joined with the attorney-general, who is styled the relator, and is answerable for the conduct and costs of the suit. The crown never pays costs, and therefore, in order to protect the defendants, there must be a relator who will have to pay the costs, if the suit should appear to have been improperly instituted.

The above-mentioned Act of the 43rd of Eliz. empowered the Court of Chancery to issue commissions to inquire into the abuse or misapplication of property given for charitable purposes; but the proceedings under this act were found so unsatisfactory that they gradually fell into disuse, and recourse was again had to the original method of procedure by information.

By the 52 Geo. III. c. 101, commonly called Sir Samuel Romilly's Act, the legislature provided a summary remedy in cases of abuses of charitable trusts, or where the aid of the Court of Chancery was required for the administration of them. The act empowered any two or more persons to present a petition to a court of equity praying the requisite relief, which the court might thereupon grant in a summary manner.

By the 59 Geo. III. c. 91, continued by the 2 Wm. IV. c. 57, the attorney-general was empowered to institute a suit by information without a relator, upon

five or more of the commissioners of charities thereby appointed certifying that the case was one which required the interference of the court. [SCHOOLS, ENDOWED.]

The jurisdiction of the Court of Chancery over property given to charity must be distinguished from the authority frequently exercised by the lord chancellor or lord keeper as visitor of charities. Charities are either under the management of individual trustees, or are established by charter as eleemosynary corporations. On the institution of a corporate charity, a visitatorial jurisdiction arises to the founder and his heirs, whether he be the king or a private person, or to those whom the founder has appointed for that purpose; and the office of visitor is to determine the differences of the members of the society, and to superintend generally the government of the body, in accordance with the statutes originally propounded by the founder. With this visitatorial power the Court of Chancery has nothing to do; it only takes cognizance of the administration of the property. When the charity is of royal foundation, the visitatorial power of the king is exercised by the lord chancellor as his representative; and even where the founder of the charity was a private person, if he has made no appointment of a visitor, and if his heir cannot be discovered, or has become lunatic, the visitatorial power results to the crown, and, as in the case of royal foundations, is exercised by the lord chancellor. The mode of application to the visitatorial in these cases is by petition addressed to the Great Seal.

Certain restrictions have been put upon the power of making gifts of property to charitable uses by the 9th of Geo. II. c. 36. The 9 & 10 Vict. c. 59, passed Aug. 18, 1846, places Jews as to charitable purposes on the same footing as Protestant dissenters. [COLLEGE; MORTMAIN; SCHOOLS, ENDOWED.]

USUCAPIO. Gaius (ii. 40-42) states that if a *Res Mancipi* was transferred by bare tradition, without the forms of *Mancipatio* or in *Jure Cessio*, the original owner retained the Quiritarian ownership, and the person to whom the thing

was transferred had only the right to the enjoyment of the thing until by possession he had acquired the ownership (*possidendo usucapiat*). For the effect of such enjoyment was to give him the same rights with respect to the thing as if it had been transferred in due legal form. In the case of moveables the Twelve Tables fixed one year as the term of *Usucapio*; in the case of land (*fundus*) and houses, two years. The acquisition of the Quiritarian ownership of a thing by enjoyment of it under the circumstances above stated for these several periods was called *Usucapio*.

Gaius states that there might also be *Usucapio* in the case both of things *Mancipi* and things *Nec Mancipi* which had been transferred by bare tradition from a person who was not the owner, provided the transferee received them in good faith (*bonâ fide*), or, in other words, believed that he received them from the owner. It seems probable that this rule of law was established by analogy to the rule of the Twelve Tables as to *Res Mancipi* which had been transferred by defective modes of conveyance. But the Twelve Tables may have fixed only the time of *Usucapio*; the origin of *Usucapio* may be anterior to the Twelve Tables.

When Gaius wrote (in the second century of our era), *Usucapio* had become a regular mode of acquiring ownership; for property of all kinds might be so acquired which had been received by tradition and *bonâ fide* from a person who was not the owner. The case of things stolen (by the law of the Twelve Tables), and a thing the possession of which had been acquired by violence (*vis*), was an exception (by the *Lex Julia et Plautia*), for even if received *bonâ fide* by a purchaser, they could never become the property of the receiver by *Usucapio*. The *Res Mancipi* of women also, who were in the tutela of their agnati, could not be objects of *Usucapio* unless they had been received from her by tradition with the proper consent (*auctoritas*) of her tutor; and the hereditas of a woman who was in tutela legitima could not be an object of *Usucapio*. (Gaius ii. 47; Cicero, *Ad Attic.* i. 5.) As land (*fundus*) could not, according to the best opinion, be an object

of *furtum*, a *bonâ fide* purchaser of land from a man who was not the owner, and knew he was not the owner, might acquire the property of it by *Usucapio*, provided the seller had not acquired the possession by violence, but had either taken possession of land which was vacant through the carelessness of the owner, or from the owner dying without a successor, or having been long absent.

Besides individual objects of property, *Usucapio* could exist in the case of *servitutes* (easements), and marriage, and in the case of an *hereditas*. Originally such *servitutes* as followed the rule of law as to *Res Mancipi* could only be transferred like *Res Mancipi*; and therefore *Usucapio* could only apply to such *servitutes*. But by analogy to *Res Mancipi*, they could be acquired by bare contract, to which *Usucapio* was superadded; and when *Mancipatio* at a later period was replaced by bare tradition, they could be acquired by contract simply. In the case of marriage, when there was no *coemptio*, the woman might come into the power of her husband by virtue of uninterrupted cohabitation of one year; and she was then said to become a part of his *Familia* by *Usucapio* founded on a year's possession. (Gaius, i. 111.) In the case of the *Hereditas*, when the testator had not disposed of his property by the necessary forms of the *Mancipatio* and *Nuncupatio*, the person who was named heres in the will could only acquire his legal title as such by *Usucapio*.

These various instances will show the original notion of *Usucapio*. It was a legal effect given to *bonâ fide* possession and uninterrupted enjoyment for a fixed time, by which defects in the transfer of a thing were made good: it was not originally a mode of acquisition. It was founded on a title good in substance but defective in form; and this defect was supplied by the proper period of enjoyment (*usus*). When this *usus* had continued for the legal time it gave its *auctoritas* (as the Romans expressed it), its efficiency and completeness to what was in its origin incomplete, and the phrase *Usus Auctoritas* was older than the expression *Usucapio*, which was afterwards the ordinary term. But *Usus* by itself

never signified *Usucapio*; for *Usus* alone could not give a title to the ownership of a thing. In the case of public land the possessor had the *usus*, but this was all that he could be entitled to as possessor. Such *us* could not from the nature of the case have an *auctoritas*, for the possessor did not occupy the public land as a *bonâ fide* purchaser. A man might also have the *usus* of private land without having a title to anything further: in which case also the *usus* could never have an *auctoritas*.

In the Roman law, as known to us in the Digest, *Usucapio* appears as a mode of acquisition which must have been owing to the circumstance of *Mancipatio* going out of use: for bare tradition in all cases, followed by the proper *usus*, gave complete ownership. Finally, when the difference between *Res Mancipi* and *Nec Mancipi* was abolished, *Usucapio* in its original sense ceased. But as in the time of Gaius we find *Usucapio* applicable to the case of things *Nec Mancipi*, which a person had possessed *bonâ fide*, this rule of law still continued, and various limitations were in course of time established as to the mode of acquiring the ownership of a thing by the enjoyment of it. Thus Justinian, in his 'Institutes' (ii. tit. 6), after reciting the old law, refers to one of his Constitutions (Cod. 7, tit. 31), by which the ownership of moveables might be acquired by use (*usucapiantur*), provided there was a *bonâ fide* possession (*justa causa possessionis præcedente*) for three years, and that of immoveable things by the "*longi temporis possessio*," which he explains to be ten years "*inter præsentes*," and twenty years "*inter absentes*:" and the Constitution applied to the whole empire. *Usucapio* is defined in the 'Digest' (41, tit. 3, s. 3) to be the "addition of ownership by the uninterrupted possession for a time fixed by law." As it was the addition of ownership, something is here implied to which this addition was to be made; and this something was a *bonâ fide* possession, that is, a possession obtained in a legal way, so that the possessor believed himself to be owner. To render possession effectual, it must be uninterrupted legal possession. An interruption



of possession was called Usurpatio. If the possession commenced bona fide, it was not interrupted in the person of the possessor's successor, but it was continued. The Romans did not use the term Præscriptio simply to express the title by Usucapio obtained under the legislation of Justinian; but the expression was "longi temporis præscriptio." There was also an extraordinary præscriptio, or title by possession, of thirty or forty years, which was allowed in certain cases in which the general conditions of præscription had been complied with, but which for certain other reasons were excluded from the shorter præscription. There was also the præscription of time immemorial.

The Prescription of the English law is not exactly the Prescription of the Roman law. The Statutes of Limitation bear a nearer resemblance to the Prescription of the compilations of Justinian, but there are differences here also: Roman Prescription gave a title to the things; the Statutes of Limitation bar the claims of persons who have been out of possession for certain defined periods. The Scotch Prescription has a nearer resemblance to the Præscriptio longi temporis of the Roman law.—[PRESCRIPTION; STATUTES OF LIMITATION.]

The subject of Usucapio admits and requires a much more complete exposition. The reader may refer to the following works:—Engelbach, *Ueber die Usucapion zur Zeit der zwölf Tafeln*, Marburg, 1828; Mühlenbruch, *Doctrina Pandectarum*; Mackeldey, *Lehrbuch des Heutigen Röm. Rechts*, where numerous authorities are referred to.

USUFRUCTUS, or USUSFRUCTUS, and USUS, belonged to the class of Servitutes Personarum or Personales among the Romans. Ususfructus is defined (*Dig. 7, tit. 1, s. 1*) to be "the right to use and take the fruits (fructus) of what belongs to another without impairing its substance." Usus is defined (*Dig. 7, tit. 8, s. 1, 2*) to be the right "to use, but not to take the fruits (frui)."

The objects of ususfructus might be land (fundus), houses (ædes), slaves, beasts of burden, and other things. He who was

entitled to Ususfructus was called Ususfructuarius, or Fructuarius. A right to a Ususfructus might be given to a person by testament, or it might be established by contract.

Generally, it may be stated that all the "fructus," or produce of a thing that accrued during the time of enjoyment, belonged to the Fructuarius; but his title to fructus was not complete till he had taken them, and it was a general rule that any "fructus" which had not been got in or taken at the time when the Ususfructus ceased, did not belong to him. The law as to things that yield an increase, such as fruit-trees and animals, did not present many difficult questions. As to houses and lands, the questions were sometimes more difficult. The Fructuarius was entitled to the rents and profits of houses during his time of enjoyment, and he was bound at least to keep them in sufficient repair, but probably not to rebuild them, if they were in a ruinous condition. He was bound to cultivate land in a proper husbandlike manner. He could work existing mines and quarries for his benefit, and he could also open new mines and work them. Generally his right of enjoyment consisted in using the thing so as not to damage the substance (*salva rerum substantia*; Ulpian, *Dig. 7, tit. 1, s. 1*). The fructuarius could maintain his rights to the ususfructus by actions and interdicts. The period of ususfructus might either be for a fixed time or for the life of the fructuarius. At the termination of the period of enjoyment, the thing was to be given up to the owner, who could generally require security for its being properly used and given up in proper condition.

The usus of a thing, as already explained, was a right to the enjoyment of a thing, but not to the produce or profits of it. Yet in some cases the usus of a thing implied a right to a certain amount of produce. Thus the usus of cattle implied that the usuarius was entitled to a moderate allowance of milk; and a man who had the usus of an estate could take wood for his daily use, and could enjoy the fruits of the orchard and other things in moderation. If a man had the usus of oxen, he could employ them for all pur-

poses for which oxen are properly used. The duties of the *usuarius* resembled those of the *fructuarius*.

The rules of law which related to the *Ususfructus* and *Usus* were numerous. Many of them are collected in the *Digest*, lib. 7; see also '*Fragmenta Vaticana*,' *De Usufructu*; and Mühlenbruch, *Doctrina Pandectarum*.

The Roman *Servitutes Personarum* were mere personal rights, which a man had as being a particular person. The rights which a man might have upon the land of another in respect of land of his own, were the *Servitutes Prædiorum* or *rerum*: the land itself may here be viewed as the subject to which the rights were attached, and the person who possessed the land had with it the rights which were attached to the land. The Easements of the English law comprehend rights of way, and the like, which a man has on or over the property of another in respect of being the owner or occupier of land to which such rights are attached, or by virtue of a grant.

USURPATION. [USUCAPIO.]

USURY. This word comes from the Latin *Usura*, or as it is more frequently used, *Usuræ* in the plural number. The Latin word signifies money paid for the use of money lent. The old word in use in England to signify what we now call interest, seems to have been *Usury*. But *usury* now means taking more interest for the loan of money than the law allows. A good deal on the subject of *usury* is contained in the arguments and judgments in the case of the Earl of Chesterfield and others *v.* Sir Abraham Janssen (2 *Veaz.* 125).

Interest is money which is paid for the use of other money, called principal. The general practice is this: the borrower agrees to pay a fixed sum yearly, half-yearly, or quarterly, for each 100*l.* lent, until the money lent is returned. When this is not the case, and when the money paid for the loan depends upon the success of an undertaking, or any casualty not connected with the duration of life, it is called a *dividend*: when the money and its interest are to be returned by yearly instalments, and paid off in a certain fixed number of years, it is called an

*annuity certain*; but when the payment is to depend upon the life of any person or persons, it is called a *life-annuity*. [ANNUITY.] But by whatever name the proceeds of money may be called, the rules of calculation are the same in every case except that of a life-contingency.

The amount of money which persons are willing to pay for the temporary use of money depends upon a variety of circumstances. When profits are high, the rate of interest will also be high. When, on the contrary, money capital is abundant in proportion to the calls for it, the competition of those persons who possess money, and who derive an income from it, will lower the rate of interest in the money-market. They will lend money at a low rate of interest to traders, who again will meet each other in competition in their various occupations, and must be content with such a rate of profit as will repay the low rate of interest for which they have bargained, together with such a compensation for their risk, skill, and trouble in its management as the degree of competition at the time will allow. If some new channel for the employment of money should be opened which holds out the promise of higher profits, a competition among borrowers will ensue, the effect of which will be to raise the rate of interest until it assumes its due proportion to the rate of profits; and as there never can, generally speaking, be two rates of profits at the same time (at least for any long period), in the same market, the effect of the additional call for capital to supply the partial demand that has been supposed, will be to raise profits and interest generally. An increase of money capital, either absolutely or relatively to the means for its employment, will obviously have the contrary effect of lowering its value in use, that is, reducing the rate of interest and profits.

It would be difficult to imagine any circumstances relating to the loan of money, which must not resolve themselves into the conditions here proposed; and it is therefore difficult to see wherein consists the wisdom of governments in limiting the rate of interest; and yet the fact of such limitation has usually been the rule, and the absence of restriction as to

the rate of interest the exception. The circumstance of the laws which regulate and limit the rate of interest in this country having been made by those who were among the class of borrowers rather than that of lenders, may perhaps afford some explanation of the views of the legislature in putting restrictions on the trade in money. That these restrictions nowever were, and so far as they exist still are, unfavourable both to lenders and borrowers, and more unfavourable to the borrowers than the lenders, may easily be demonstrated. In the year 1787 Mr. Bentham wrote his 'Defence of Usury,' and showed, in a manner which one would have thought adapted to produce general conviction, the mischief of such restrictions so far as the law was operative, and the inefficacy of the law to prevent altogether what are denominated usurious transactions. But the minds of men are slow in surrendering a prejudice or a false judgment to the attacks of true principles; and for many years the efforts of Mr. Bentham and others remained fruitless. The system of restriction has however of late been modified in some important particulars, so that within certain limits, as regards time, the rate of interest among the mercantile classes may now be said to depend upon what may be considered the market value of money, which is thus allowed to bear its due proportion to the current and usual rate of profits. A statute passed in 1545 limited the rate of interest to 10 per cent. per annum; in 1624 the rate was lowered to 8 per cent., in 1660 to 6 per cent., and by the statute 12 Anne, st. 2, c. 16 (1713), it was further reduced to 5 per cent., beyond which rate, with the recent exception above referred to, it has been illegal to charge since that time, under the penalty of forfeiting for every offence three times the amount of the money lent.

During the late war, when the rate of profit was high and when the government often borrowed enormous sums, the system of restriction was not adhered to in the negotiation of its loans, the interest upon which was necessarily regulated by the market value of money; and at all times necessitous borrowers and those who have doubtful or insufficient security to offer to

lenders have always found means to evade the statute by granting annuities [ANNUITIES] and by other means. Except for one or two almost momentary occasions of commercial difficulty or panic, the market rate of interest in this country has not been higher, since the peace in 1815, than the legal rate.

The law does not recognise the charge of interest upon interest, or, as it is called, compound interest; and yet it is only equitable that where money which is due for interest is not settled, it should be considered a fresh loan, for the use of which interest should be paid. This however is a rule so easily evaded by the borrower granting a further acknowledgment of the interest as though it were principal, that it does not amount to a practical hardship: such new contract, in fact, changes the interest already due into a principal sum. The law also recognises rests in mercantile and banking accounts, in which interest is charged upon a former ascertained balance. Such balance may, and in fact often does, include interest already due; and thus the creditor really receives interest upon interest, or compound interest.

Debts do not always carry even simple interest from the time when the money becomes due to the creditor: in such case payment of interest is rather the exception than the rule. Unless the debt be such a debt as carries interest by the custom of merchants or traders, or unless there is an express agreement to such effect between the parties, or unless such agreement can be inferred from their course of dealing, or unless there are some very special circumstances, debts do not carry interest from the time when due. But now, by 3 & 4 Will. IV. c. 42, a jury may, if they think fit, upon all debts or sums certain, allow interest to the creditor, at a rate not exceeding the current rate of interest, from the time when such debts or sums were payable, if payable by virtue of a written instrument at a certain time; or if payable otherwise, then from the time of a demand of payment in writing, so as such demand give notice that interest will be claimed from the date of such demand. This statute also empowers juries to give damages, in

the nature of interest, in respect of the detention or appropriation of goods. By 1 & 2 Viet. c. 110, all judgment-debits are to carry interest at the rate of 4 per cent. per ann. from the time of entering up the judgment. As to interest of money lent on ships or their cargo, see *BOTTOMRY*, and on legacies, see *LEGACY*.

The relaxation above mentioned as having been made as to the rate of interest formed part of the arrangement made in 1833, at the renewal of the charter of the Bank of England. (3 & 4 Wm. IV. c. 98.) It consisted in excepting from the operation of the statute all bills of exchange and promissory notes not having more than three months to run previous to their maturity; these might be discounted at any rate of interest agreed upon with the holder. More recently, by the act 1 Victoria, c. 80 (July, 1837), this relaxation was extended to all such mercantile instruments which have not twelve months to run before they are due.

USUS. [USUFECTUS.]

## V.

**VAGRANT** This term, which simply denotes "a wandering person," is derived from the Latin *vagor*. It was probably introduced into our law language from the Norman French; for the phrase "*vagerantz de lieu en lieu eurrants per pais.*" occurs in our early statutes in the sense in which the word "vagrant" is used in common language at the present day. (Stat. Rich. II. c. 5.) The persons to whom it is applied in ancient documents are usually classed with "faitours" (a word of doubtful origin, but meaning an idle liver or slothful person; Cowell's *Interpreter*; Kelham's *Dictionary*), "travelyng-men," and "vagabonds." The latter expression, "vagabundus," was known throughout Europe in connection with feudal law, and is interpreted to mean "crebro vagans, cui nec certum domicilium, nec constans habitatio est." (Calvini *Lexic. Jurid.*) It was used in this sense in English law as early as the reign of Henry II. (Cowell's *Interpreter*.) Modern laws have however given to the word "vagrant" a much more extended

meaning, in the application of which the notion of wandering is entirely lost.

In the course of the transition made by the lower classes of society from the condition of feudal viliains to that of free labourers, vagrancy and mendicity ensued from the unsettled state of the poor; and in most countries where feuds had prevailed, severe laws were made to repress the evils which sprung from this source. In England various statutes and ordinances were passed to obviate the inconveniences arising from wandering mendicancy. These statutes were very numerous from the 23 Edward III. (1349) to the end of the reign of Henry VIII. But notwithstanding these laws vagrancy appears to have greatly increased at the beginning of the reign of Edward VI., and a severe enactment (1 and 2 Edward VI. c. 3) against vagrancy was passed in that reign, but it was repealed by 3 & 4 Edward VI. c. 16.

About the beginning of the reign of Elizabeth, a description of persons called *rogues* first appear in the general class of vagrants. The derivation of this word is variously given. Horne Tooke derives it from a Saxon word signifying "cloaked," or covered. (*Diversions of Purley*, vol. ii., p. 227.) Webster takes it from another Saxon word, and Dr. Johnson admits its derivation to be uncertain. Lambard says, "The word is but a late guest in our law; for the ancient statutes call such a one a valiant, strong or sturdy beggar or vagabond, and it seemeth to be fetched from the Latin 'rogator,' an asker or beggar." (*Eirenarcha*, book iv., chap. 4.) Dalton also says, "A rogue may be so called quia ostiatim rogat." (*Country Justice*, chap. 83.) It is believed that the word does not occur in the English language before the middle of the sixteenth century; and if so, it is probably one of those numerous cant words by which, at that period, vagrants, in counterfeiting Egyptians or gipsies, began to designate different classes of their own "ungracious rabble," and of which Harrison enumerates twenty-three degrees. (Harrison's *Description of England*, prefixed to Hollinshed's *Chronicles*.)

In the course of the reign of Elizabeth the evils of vagrancy increased to an

alarming extent; and although the accounts given by historians of the multitude of vagabonds in England are founded upon rude estimates, and are probably somewhat exaggerated, there is undoubted evidence that the numbers and attitude of these persons at that period constituted an evil of dangerous magnitude.

In 1597, after experience had shown that temporary expedients and ill-directed charity only increased the amount of vagrancy, and that severe punishments and penalties were wholly ineffectual in preventing it, the House of Commons appointed a committee to whom most of the existing laws relating to the condition of the poor, as well as certain bills for their amendment, were referred. (D'Ewes's *Journals*, p. 561.) This committee, of which Sir Francis Bacon was a member, and which was composed of all the practical men of the House, seems to have perceived and to a certain extent acted upon the principle that, in order to justify severity against vagrancy and mendicity, it was necessary to provide the means of relieving that destitution which was the ready and plausible excuse for both. They therefore prepared the statute 39 Eliz. c. 3, which for the first time organized that machinery for the legal relief of the poor, which was a few years afterwards completed and made perpetual by the stat. 43 Eliz. c. 2. The same committee also recommended measures for encouraging the building of "hospitals, or abiding and working houses" for the poor, and for improving and reforming such as were already in existence, but had been misapplied or abused. And at the same time they introduced a more rational enactment for the correction and suppression of fraudulent vagrancy. (Stat. 39 Eliz. c. 4.) "Many statutes," says Sir Edward Coke, (2 *Inst.*, 728), "have been made for the punishment of rogues, vagabonds, and sturdy beggars, but very few to find them work and to enforce them thereunto." The statute 39 Eliz. c. 4, supplied this deficiency by providing houses of correction, with stocks and materials for the employment of the inmates, and by enforcing the use of the means thus placed in the hands of the poor by severe penal-

ties against the idle. The provisions of this statute, with some alterations made by the stat. 1 Jac. I. c. 25, continued in force during the 17th century; and, when repealed by the stat. 12 Anne, stat. 2, c. 23, still served as the model and foundation for future acts. It declared that a great variety of persons, who are described in the act, should be deemed rogues, vagabonds, and sturdy beggars.

The continued unwillingness of magistrates to enforce the statute of Elizabeth, notwithstanding a proclamation of James I., occasioned the passing of the stat. 7 Jac. I. c. 5, which compelled the justices of every county under heavy penalties to erect proper houses of correction for setting rogues, vagabonds, and other idle and wandering persons to work, and also required them to meet twice a year or oftener, if occasion required, for the better execution of the law.

The laws relating to vagrants continued substantially upon the footing of the statutes of 39 Eliz. and 7 Jac. I. for more than a century, until, in 1744, they were reconsidered and remodelled by the stat. 17 Geo. II. c. 5. This was the first legislative measure which distributed vagrants into the three classes of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. Although this statute is now wholly repealed, it continued in force nearly a century, until 1822, when a temporary act, stat. 3 Geo. IV. c. 40, passed, repealing all former laws and re-enacting most of the provisions of the stat. 17 Geo. II. c. 5, with many additions and modifications. The provisions of the stat. 3 Geo. IV. c. 40, were however entirely superseded by the 5 Geo. IV. c. 83, which now (1846) constitutes the law respecting vagrants. This act was amended by the 1 Vict. c. 38 (1838). The third section of the statute Geo. IV. declares what persons are idle and disorderly persons, and may be committed by a single magistrate to hard labour in the house of correction for any time not exceeding one month.

The 4th section of this act declares certain classes of persons, which are there described, to be rogues and vagabonds, and empowers a single magistrate to commit them to hard labour in the house

of correction, for any time not exceeding three months.

The 5th section authorizes a single magistrate to commit incorrigible rogues to the house of correction until the next sessions, during which interval they are to be kept to hard labour. The 10th section of the act authorizes the justices at sessions to continue the imprisonment of this class of offenders with hard labour for any time not exceeding a year, and to order whipping, if they deem it to be expedient. Incorrigible rogues are defined by the statute.

The statute, besides the definition of the facts and circumstances which are to constitute offences in the several classes above enumerated, contains various provisions for the prosecution of vagrants and the regulation and disposal of them. Thus it is enacted that any person may apprehend a vagrant and bring him before a magistrate. The persons as well as the carriages or luggage of the several descriptions of vagrants may be searched, and money or goods found upon them may on their conviction be applied towards the costs of apprehending them and maintaining them in prison. If proceedings at the sessions are contemplated, either by reason of an appeal against a summary conviction or the commitment of an incorrigible rogue, the committing magistrate may bind over witnesses to prosecute, and the justices at sessions may order the payment of costs to persons so bound. And an appeal is given to the next sessions to any person aggrieved by an act or determination of any magistrate out of sessions concerning the execution of the act.

Although the modern statute is in many respects an improvement of the law, it is liable to some of the objections which were made to the 17 Geo. II. c. 5, and to others of a graver character. It is by no means exclusively a Vagrant Act, though popularly so called; its provisions extend to various offences not necessarily connected with vagrancy, which the legislature has placed within the summary jurisdiction of justices of the peace. Under the former statute, a single magistrate was only intrusted with the power of summary commitment for a

month in the case of idle and disorderly persons, or to the next sessions in case of rogues and vagabonds and incorrigible rogues. But, under the recent act, a single magistrate has the power of at once committing rogues and vagabonds to prison with hard labour for three months. If the offences to be punished had been precisely defined by the statute, this extensive summary jurisdiction might have been less objectionable; but the language of the law is very loose and inaccurate. For instance, who are to be considered "suspected persons," or "reputed thieves," or what is to be taken for an "unlawful purpose," or "frequenting a street," in the true legal construction of this statute, so as to render the persons to whose acts these phrases are applied rogues and vagabonds? are often questions of doubt and difficulty to practical lawyers, and may reasonably occasion hesitation and differences of opinion even among those to whom the final interpretation of penal laws belongs. This latitude and vagueness of expression are peculiarly dangerous in a law which gives large judicial power to unprofessional persons, who are for the most part withdrawn from the control of public opinion in the exercise of it; where the subjects and objects of the law are nearly connected with local excitements and prepossessions; and where the parties who suffer from misdecision are commonly the poor and helpless, to whom an appeal is wholly inaccessible.

VALUE. [POLITICAL ECONOMY; PRICE.]

VASSAL. [FEUDAL SYSTEM.]

VENDOR AND PURCHASER.

The law of Vendors and Purchasers of real estate in England is a subject of great extent, which may be said to comprise nearly the whole practical application of the law of real property.

Contracts for the sale and purchase of land or other real estate may be entered into either privately between the parties, or upon a sale by auction. At common law, agreements for the purchase of real estates might be made by parol, but by the Statute of Frauds (29 Car. II. c. 3, ss. 1, 2, 3, and 4), "All leases, estates, interests of freeholds, or terms of years,

or any uncertain interest of, in, or out of any messuages, manors, lands, tenements, or hereditaments, made and created by livery and seisin only, or by parol only, and not put in writing by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the effect of leases or estates at will, any consideration for making any such parol leases or estates notwithstanding." But leases not exceeding three years, whereupon the rent reserved should amount to two-thirds of the full improved value, were excepted. The act requires the assignment, grant, and surrender of existing interests to be in writing, and enacts that "no action shall be brought whereby to charge any person upon any agreement made upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised." The note or memorandum of agreement required by the statute need not be a formal document, and any writing, such as a letter, or receipt for purchase-money, may constitute an agreement within the statute, provided it contain the terms of the agreement within itself, or by reference to another writing; and if the document be written by the party, the occurrence of his name anywhere in the document is a sufficient signing.

Upon sales of estates by public auction, the highest bidder, upon being declared the purchaser, is considered to have entered into a contract for purchase according to the particulars and subject to the conditions of sale; and the auctioneer, who is for this purpose considered as the agent of both vendor and purchaser, is thereupon authorized to sign an agreement of purchase. The writing down the purchaser's name upon any memorandum of sale at the time of the bidding is a sufficient signing. Sales by auction of lands are within the above-mentioned enactments of the Statute of Frauds; but sales before a master under a decree of a court of equity will be carried into exe-

cution although the purchaser did not subscribe any agreement, for the judgment of the court in confirming the purchase takes it out of the statute. An auction duty of 7*d.* in the pound is payable upon all sales by auction of any interest in freehold, copyhold, or leasehold lands, tenements, houses, or hereditaments (27 Geo. III. c. 36; 37 Geo. III. c. 14; and 45 Geo. III. c. 30). The subject of the sale and purchase of estates is discussed at length in Sugden's *Treatise on the Law of Vendors and Purchasers of Estates*.

VENIRE FACIAS, or *Venire*, the name of a writ addressed to the sheriff or other returning officer, commanding him "to cause to come" (*venire facias*) the parties set forth at the place named in the writ. The purpose to which the writ has been generally applied, and in reference to which it is generally known, is in summoning juries to serve for the ordinary trial of civil causes.

The form on such occasions now charges the sheriff to "cause to come here forthwith twelve good and lawful men of the body of your county, qualified according to law, and who are nowise of kin either to A B, the plaintiff, or C D, the defendant, to make a certain jury of the country between the parties aforesaid of a plea of —, because as well the said defendant as the said plaintiff, between whom the matter in variance is, have put themselves upon that jury."

This writ is sued out, but is not acted upon, for the court assumes that the jurors have been summoned upon it and have failed to appear at Westminster, where anciently the trial itself took place. At the same time another writ issues, by which the sheriff is commanded to distrain their lands or goods, or have their bodies, so as to compel their appearance either before the court at a subsequent day, or before the judges of assize or Nisi prius, if they should previously come into the county. This is so arranged that the judges always do previously come into the county, and the jury are summoned and caused to appear before them.

(*Tidd's Practice*; *Stephen On Pleading*; 6 Geo. IV. s. 50; 3 & 4 Wm. IV. c. 67.) [JURY; VENUE.]

VENTRE INSPICIENDO, WRIT

DE. "When a widow is suspected to feign herself with child in order to produce a suppositious heir to the estate, the heir presumptive may have a writ de ventre inspiciendo, to examine whether she be with child or not; and, if she be, to keep her under proper restraint till delivered; which is entirely conformable to the practice of the civil law: but if the widow be, upon due examination, found not to be pregnant, the presumptive heir shall be admitted to the inheritance, though he hath to lose it again, on the birth of a child within forty weeks from the death of a husband." (Blackstone, *Comm.* i. 456.) The Roman practice is explained in the Title of the Digest (25 tit. 4): *De inspiciendo ventre custodiendoque partu*. The practice originated in the joint reigns of Aurelius and Verus, in a case in which a wife denied her pregnancy and the husband maintained it. The wife had separated from the husband, and probably wished to keep the child that might be born, though by law it would belong to the husband. If a woman alleged that she was left pregnant by her deceased husband, it was her duty to announce the fact to those whom it concerned, and to inform them that they might, if they pleased, send women to inspect her (*quæ ventrem inspiciant*). All the proceedings of inspection and of watching the woman, if she should be reported to be with child, are minutely prescribed in the Praetor's Edict. The penalty in case of the woman not complying with the Edict was, that the Praetor would refuse to the child the *Bonorum Possessio*.

The form of the English writ *De Ventre Inspiciendo* is given *Co. Litt.* 8 b. It is directed to the sheriff, and commands him to empanel a jury of twelve women to search whether she be enscint. If they find that she is with child, another writ issues which commands that she shall be safely kept and duly inspected by the women, who must be present at the delivery.

The use of this writ is an instance in which what is called a proceeding at common law is taken from the Roman system. The writ is not obsolete, as some people suppose; it has issued within the last fifteen years. (*Co. Litt.* 8 b., and

N. 44 in Butler's edition; Comyns, *Digest*, Bastard, C.)

VENUE (*vicinetum, visne*, "neighbourhood"). The county in which the trial of a particular cause takes place is said to be the Venue of that cause. The old practice in this matter is connected with the original functions of the jury, as persons who were acquainted with the facts in issue. [JURY.] In order then that a proper Venire might issue to the sheriff, the place in which the action was brought was stated in the margin of the declaration, and on the statement throughout the pleadings of any issuable fact a statement was also made of the place at which such fact was alleged to have occurred. As to all such facts upon which issue was taken, a venire was sued out applying to each different place. The sheriff returned jurors from that place, and by those jurors the facts were decided, so that several distinct Venires and trials might be necessary to dispose of the issues in one action.

When juries ceased to act on their own knowledge, and began to determine on the evidence of witnesses, the necessity ceased for summoning them from the particular part of the county, and the practice gradually declined, till at last, the form of the Venire still continuing the same, two jurors from the same hundred only were required for the trial of a personal action. By the stat. 16 & 17 Car. II. c. 8, it was enacted that no error should be brought, because there was no right Venue, provided the cause was tried by a jury of the proper county or place where the action was brought. After this statute the practice was established of trying all the issues by the jury of the general Venue in the action. By 4 Ann. c. 16, it was further enacted that "every Venire Facias for the trial of any issue shall be awarded of the body of the proper county where such issue is triable:" that is, from the county at large, without reference to the particular hundred containing the place laid as Venue, and such is still the practice. By a general rule of all the courts, of Hilary Term, 4 Wm. IV., it is ordered, that "In future the name of a county shall in all cases be stated in the margin of a de-



claration, and shall be taken to be the Venue intended by the plaintiff, and no Venue shall be stated in the body of the declaration, or in any subsequent pleading."

A distinction was long since established between local (that is, actions relating to real estate) and transitory (that is, actions of debt, contract, for personal injuries, &c). In regard to the former, it was held that the actual place in which the subject-matter was situated must be laid as the Venue in the action, and that rule still prevails. The reason is said to proceed from the circumstance that, unless the action were brought in the actual county, the sheriff of the county would be unable to give effect to the judgment in the action. In transitory actions, on the contrary, the subject-matter of them being held not to have any fixed place, the plaintiff had liberty to bring his action in any county in which he pleased. As a consequence of which it follows, that though the cause of action has occurred even out of the kingdom, it is still open to the plaintiff to bring his action in the courts of this country. The plaintiff has still this liberty in a transitory action. But the courts assert an authority upon application made to them of changing the Venue. This is done upon its being made to appear that great inconvenience would arise from trying in the original county, because the body of the evidence lies in another, or because from local prejudices a fair trial cannot be had, &c. And the same authority is exercised even in local actions in spite of the technical difficulty which has been before referred to. (3 Blackstone's *Com.*, 294, 384; Stephens *On Pleading*, c. ii., s. 4, v. 1.)

In criminal trials the Venue is the county in which the offence charged was actually committed; before a grand jury of that county the indictment must be preferred, and before a petty jury the trial had. The courts however have the same discretion as to the power of changing the Venue as in civil cases; and as to criminal trials, many exceptions have been introduced by various statutes.

VERDERER. [FOREST LAWS;  
WOODS AND FORESTS.]  
VERDICT. [JURY.]

VESTRY is the name of that part of a parish church where the ecclesiastical vestments are kept; and inasmuch as meetings of parishioners have been usually held in this part of the church for parochial purposes, such meetings, duly convened, have acquired the name of vestries; so that even where a building remote from the church has been erected for parochial meetings, it is usually called the *vestry-room*. When the meeting is held in the church, or even in a building within the precincts of the churchyard, the ecclesiastical courts claim jurisdiction over the conduct of the parishioners.

By the common law all rated inhabitants of a parish have a right, either periodically or when specially convened, to meet in vestry for the affairs of the parish, and to vote the necessary pecuniary rates. But this common law right has been modified in many ways.

1. By custom, which has vested the government of some parishes in a select and usually a self-elected body of persons, probably the successors of individuals to whom the parishioners at some previous time delegated the management of their parish for a stated period, but who, by the indifference and neglect of their constituents, came to hold permanently the powers intrusted to them. The principal act for the regulation of these vestries is the 58 Geo. III. c. 69. It requires that three days' notice shall be given of the holding a vestry; that if the incumbent of the parish is not present, a chairman shall be elected by the meeting, and that minutes of its proceedings shall be kept and signed by the chairman and such of the parishioners present as think fit; and it gives to each inhabitant, provided he has paid his rates, one vote, if he is rated on a rental under 50*l.*, and, if on a higher rental, one vote for every 25*l.* for which he is rated, so that no one however shall have more than six votes. This act does not extend to parishes within the City of London or borough of Southwark.

2. Section 20 of the act 10 Anne, c. 11, gives to the commissioners appointed by that act (for the purpose of erecting fifty new churches in London and its neighbourhood) power to appoint, under their seals, with the consent of the ordinary, 'a

convenient number of sufficient inhabitants, in each parish created under the act, to form a select vestry of such parish." It vests in the majority of such select vestry the power to supply vacancies, and gives them all the powers of other vestries. The 59 Geo. III. c. 134, another church-building act passed to explain and amend the act of the previous session, gives a similar power (§ 30) to the commissioners under those two acts to appoint, with the like consent, a select vestry out of the "substantial inhabitants of the district," parish, or chapelry, for the management of the affairs of the church, and the election of church or chapel wardens, vacancies being supplied by the select vestry itself; and the 10th section of the act 3 Geo. IV. c. 72, confines the powers of the vestryman to his own district with respect to ecclesiastical matters, and provides that any deficiency (a somewhat vague expression for an Act of Parliament) in the select vestry shall be supplied as vacancies have heretofore been filled up in the vestries of the particular parish. Local acts have also created vestries.

3. The 59 Geo. III. c. 12 (Sturges Bourne's Act), enables general vestries to appoint special vestries, consisting of not more than twenty, or fewer than five, parishioners to superintend the relief of the poor, the overseers of the poor being placed under their authority. These special vestries are little more than committees of the general vestries, to which they are responsible.

4. A fourth kind of vestry is created by 1 and 2 Wm. IV. c. 60 (Sir John Hobhouse's Act). The adoption of this act is left to the discretion of each particular parish; but rural parishes of less than 800 rated householders are excluded from its operation. In order to apply the act to any parish, either one-fifth, or else fifty, of the rated parishioners must sign a requisition to the churchwardens to take the votes of the parishioners for or against its adoption. When the act has been adopted in the manner provided by the act, the parishioners who have been rated one year to the relief of the poor meet on some day in May (21 days' notice having been previously given on the church-

doors), and elect out of the resident householders assessed upon an annual rental of not less than ten pounds (or if the parish is in the City of London, or contains more than 3000 resident householders, upon an annual rental of 40*l.*) persons as vestrymen, in the proportion of twelve for every thousand rated householders: but the number of vestrymen is never to exceed 120. One-third of the vestry goes out of office in rotation annually, and their places are supplied by the method already described. The incumbent of the parish is entitled *ex-officio* to be a member of the vestry; indeed the rector of the parish is supposed to be entitled to preside at vestries, but by what authority, other than an implied opinion of the ecclesiastical courts, and the provision already cited from the 58 Geo. III. c. 69, is not clear. This act also prescribes that the parish accounts shall be open to the inspection of all the parishioners; and that on the day of electing vestrymen the rate-payers shall elect, out of persons with the same qualification as is necessary for vestrymen, five auditors of the accounts, who shall not be members of the vestry, or concerned in any contract with the parish. These are to audit the accounts every half-year, and an abstract of the accounts is to be published by the vestry clerk within a fortnight after the audit, and distributed to the rate-payers at the price of one shilling each copy. A statement is also to be made out annually, for the inspection of the parishioners, of all the estates and charitable foundations of the parish, their nature and application.

It is the duty of vestries to provide funds for the maintenance of the edifice of the church and the due administration of public worship; to elect churchwardens; to present for appointment fit persons as overseers of the poor; to administer such estates and other property as belong to the parish; and in some cases, under local acts, to superintend the paving and lighting of the parish, and to levy rates for those purposes.

The remedy for neglect of duty by a vestry is a mandamus from the Court of Queen's Bench, directed to the officer whose duty it would be to perform the

particular act, or in some cases by an ordinary process against him, or by a process against the churchwardens out of the ecclesiastical courts.

VICAR, VICARAGE. [BENEFICE, pp. 341, 342.]

VICAR APOSTOLIC. [CATHOLIC CHURCH.]

VICTUALLERS, LICENSED. [ALEHOUSES, p. 99.]

VIEW OF FRANKPLEDGE. [LEET.]

VILL. [TOWN.]

VILLEIN, or VILLAIN, denotes a species of bondman subject to his feudal superior. The word is from the low Latin form Villanus, which is from the Latin word Villa. In England, during the Anglo-Saxon period, a large part of the people appear to have been in a servile condition, either as domestic slaves or cultivators of the land. The power of the master among the Anglo-Saxons, though very extensive, had some limits. If a master beat out the eye or the tooth of his slave, the slave was entitled to his freedom; if he killed him, he paid a fine to the king, unless the slave lived a day after the wound was inflicted, in which case the offence was unpunished. The Norman conquest did not materially alter the state of slavery in England. The lands were transferred to Norman masters, and the slaves passed as part of the property. After the Conquest there were four classes of slaves. 1, Villeins in gross, who were the personal property of their lords, and performed the lowest household duties. They were very numerous, and were frequently sold and even exported to foreign countries. (Walsingham, *Hist. Ang.*, p. 258.) 2, Villeins regardant, or praedial slaves, who were attached to the soil and specially engaged in agriculture. These were in a better condition than villeins in gross, were allowed many indulgences, and even, in some cases, a limited kind of property; yet the law held that the person and property of the villein belonged entirely to his lord, the rule being the same as that in the Roman law, that whatever was acquired through the slave was acquired by the lord. 3, A class called Cottarii is mentioned in Domesday

Book; and 4, in the same book, a class called Bordarii. But the first two classes in fact comprised all the villeins.

The legal condition of villeins in the reign of Edward IV., when Littleton wrote his book of Tenures, appears from that work, Sections 172-208.

In England a few instances of praedial servitude existed so late as the reign of Elizabeth, and perhaps at a still later period. (Barrington, *On the Statutes*, 274; Hallam's *Middle Ages*, vol. i. p. 223.) In some parts of France it existed down to the time of the Revolution [SLAVERY.]

(Bracton; Littleton; Coke's *First Inst.*; Reeves, *Hist. of English Law*; Blackstone's *Commentaries*.)

VILLEINAGE was a base tenure of land. This tenure was founded on the servile state of the occupiers of the soil [VILLEIN], who were allowed to hold portions of land at the will of their lord, on condition of performing base and menial services. Where the service was base in its nature, and uncertain as to time and quantity, the tenure was called pure villenage; but where the service, though base, was certain and defined, it was termed privileged villenage, and sometimes villein-socage.

Villenage is generally supposed to be the origin of copyhold tenure. [COPYHOLD, ENFRANCHISEMENT.]

VISCOUNT, the name of a dignity in the English peerage, which is next above that of Baron. It is commonly said that Viscount Beaumont, created in 1440 by Henry VI., was the first who had the title. But it is not quite certain whether the title did not exist earlier as a dignity and distinct from the title of an office. The ancient vicecomes or viscount was the deputy of the earl or count; and vicecomes is the Latin word for the sheriff of a county. [COUNT, EARL, SHERIFF; Spelman, *Vice-comes nomen dignitatis*; Camden, *Britannia* (Gough), i. xciv.; 2, 229; 4, 24.]

VISITOR. [COLLEGE; SCHOOLS, ENDOWED; USES, CHARITABLE.]

VISITATION. [ARCHDEACON; BISHOP.]

VOTING. Voting means the giving of a man's voice or opinion in some

matter which is to be determined by a majority of voices or opinions of persons who are empowered to give them. The commonest case of voting in countries where there is an elective branch of the supreme power is that of voting for members of a legislature, as in Great Britain and Ireland.

The vote may be given either orally, in which case it is notorious for what person or persons a man gives his vote; or it may be by ballot, that is, by the voter writing on a tablet or paper the name or names of the person or persons for whom he votes, and putting the tablet or paper into a closed box. When the voting is oral, it is open voting; when it is by ballot, it is secret voting, or at least secret so far as the voter chooses to keep it secret, if the business is properly managed; for secrecy is the object of the voting by ballot.

There has been much discussion on the vote by ballot. The question is resolvable into various parts: first, is it a matter of public utility that a man's vote for a member of the House of Commons (to take this as an instance, and the main instance here in Great Britain) should be open or secret? There is something to say on both sides, though those who have argued in favour of the one or the other of the two modes of voting have perhaps not discussed this part of the question fully. There is a short answer to those who say that the non-voters, or the whole body of voters, or that all people have a right to know how a man votes. The answer is, that they are abusing the term Right. The franchise is not given under any such conditions, and there is no Right of the kind, if we use the word Right in its strict and proper sense. What is meant is probably this, that it is for the general interest that a man's vote for a member of the Commons' House should be open, in order that opinion may operate upon him; for if this is not the reason, it is difficult to see that there is any other reason for open voting. But opinion may be wise or unwise, favourable to a good candidate or against him. Open voting, therefore, if it is to be affected by opinion, may have bad results as well as good

results. On the whole, however, it must be admitted in a country in which there is a representative system, that the opinion of the majority of the voters must be considered to be right, and we must consistently admit that under a system of open voting, the whole influence of opinion, if it has any influence, bears a balance in favour of the majority. As then there must be a majority in any given case of voting, and as that majority represents the right opinion, the opinion of the majority before the voting ought to operate, and it can only operate effectually when the voting is open.

On the other side when a man has a vote, it is implied that he has a voice and a will of his own, and that it is intended that he shall exercise it. But he can only exercise it freely when all restraint is removed. So far as public opinion has any value, so far as arguments have any weight, he may learn what opinion is, he may listen to the arguments, and he may vote as he thinks best. If his vote is to be more the expression of his own opinion than of the opinion of other people, which seems to be implied in the phrase of "having a vote," he ought to be allowed to give his vote in that way which gives him most freedom to do as he wishes, whichever of the two ways that may be. Again, opinion and power and influence and threats may and do operate largely on many persons who have votes, and accordingly they vote in a different way from what they would vote if they were free from all influence. We believe this fact is not denied by those who are in favour of the ballot or those who are against it. But then it may be urged that if voting were secret, improper means of working on the voter would still be resorted to. It must be admitted that they might and would; but the question is, would they be so efficient in making him vote contrary to his wish as when the voting is open?

A great many people have no opinions of their own: they follow the opinions of others. If the voting is secret, they can follow that opinion which they are inclined to follow, at least if the secrecy of their vote is effectually guarded. If the voting is open, they are exposed to the

risk of being led for some other reasons than their own choice to vote not as they wish to vote; and it does not follow that because the voting is open, they will be guided by the opinion of the majority, which is here assumed to be the right opinion. The opinion of the minority may be exercised as efficiently on any given voter as that of the majority. In fact one individual or a few individuals chiefly operate on voters either by themselves or by their agents, and the operation of the individuals who belong to the minority will be as efficient as the operation of the individuals who belong to the majority, in proportion to their numbers, other things being equal.

Suppose it to be determined, though it is not determined here, that secret voting is on the whole more consistent with the notion of a man "having a vote" and "giving a vote," and that it is at least as beneficial to the community as open voting, there remains the objection that there is no contrivance by which the secrecy of a man's vote can be secured. The two chief objections then to vote by ballot are—that it is not for the general interest, and that secrecy cannot be secured: to which may be added a third objection, that from the attempt to secure secrecy more mischief will ensue than arises from open voting.

That it is possible to devise means by which the bare giving of the vote may be secretly effected, can hardly be denied. If the giver of the vote does not keep his own secret, which sometimes he would not do, that is his own affair. If secrecy is secured for him against everybody except himself, that is all that can be attempted. But it is urged that there would be many attempts for many reasons and in various ways on the part of persons who were interested in elections, to ascertain a man's vote, and that these attempts would give rise to many evils and inconveniences to the voter himself, and subject him to much annoyance. Granted that this may be so or will be so, it does not follow that a greater amount of true expression of opinion, which is the thing assumed to be aimed at in taking men's votes, will not be gained by secret than by open voting.

Bribery is one means by which voters are induced to give their votes; and the enactment of laws against bribery is founded on the assumption that bribery should be prevented, that voters should give their votes without pay or reward. Under the system of open voting there is much bribery in the election of members for the Commons' House. It cannot be asserted that secret voting would destroy bribery, but perhaps it would render it more difficult. This subject is considered under the article BRIBERY.

The condition of the Roman voters was very peculiar. They were very numerous, and many of them very poor. Bribery existed to a great extent when the voting was secret, and there were severe penalties against the candidate who bribed, and probably against his agents also. The Roman voters did not undervalue the ballot, if we may take Cicero's testimony (*Pro Plancio*, 6): the ballot (*tabella*), he says, is a favourite with the people, for it discloses a man's face, but closes up his mind, so that he can do what he chooses, and promise what he is asked. If this representation is true, a Roman might promise his vote to one man and vote for another, and be well pleased that he had the power of doing so.

The kind of immorality here suggested is not a matter for severe censure. He who is permitted by the form of the constitution and by law to ask for a vote and gets a promise, may not get the vote which is promised. The immorality of him who buys a vote, or tries to get it by threats, or unfair means, is the same whether the voter keeps his promise or not. The immorality of the voter who promises his vote to one man which his judgment gives to another, and keeps his promise, appears to be at least as great as that of the man who promises his vote to the man whom he does not like, and gives it to the man to whom he wishes to give it.

Secret voting is much used in England, in clubs, in committees, and on many occasions. Its use is recommended by its convenience. It enables a man to vote as he pleases without giving offence, and without getting into personal quarrels. The practice is maintained to be good on

the whole, though occasionally there is evil in it. A spiteful, ill-tempered fellow may, by a secret vote, sometimes inflict injury or at least great pain on an honest and respectable man. Yet the advantages of the secret voting in all cases where it is used, are supposed to be greater than the disadvantages.

If secret voting is in any case good, or if in many cases it is good, as we believe it is admitted to be by all persons, those who object to its being extended to other modes of voting than those in which it is at present practised are loaded with the burden of showing in each case to which it is proposed to extend it, that there are good reasons against such extension. Those who are in favour of the ballot must reply to such reasons. It is sufficient for them to open the case of any particular extension of the ballot, by declaring that in such case the introduction of the ballot would be beneficial.

This matter sleeps at present, but when more urgent reforms are accomplished, it is probable that the discussion of it may be revived.

VOYAGE. [BOTTOMRY; SHIPS.]

W.

WAGER. [GAMING.]

WAGER-POLICY is a name given to a policy of insurance made by persons having no interest in the event about which they insure. [GAMING, p. 59.]

WAGER OF BATTLE. [APPEAL.]

WAGES are the price paid for labour.

The labour of man, being an object of purchase and sale, has, like other commodities, a natural or cost price, and a market price. Its natural price is that which suffices to maintain the labourer and his family, and to perpetuate the race of labourers. The rate of wages cannot be permanently below this natural price, for if in any country labourers could not be thus maintained, they must cease to exist; they must be exterminated by famine, or be removed to some other country. If the price paid were only sufficient to maintain the labourer himself, without any family, he would be unable to marry, or his children would die of want. By these distressing causes the supply of la-

bour would be reduced until the competition of employers had raised the price of labour to its natural level. But, although the natural price would thus appear to be that which only wards off starvation, there is, happily for mankind, a principle which tends to raise it to a much higher standard. Every man desires to improve his condition, to enjoy more of the comforts and luxuries of life than have fallen to his lot, and to raise himself in the estimation of others. If he has accomplished this, he acquires habits of living which it is painful for him to forgo. He endeavours to bring up his children with the same views and habits as his own, and feels it a degradation if they fall below the standard which he has himself attained. The necessary consequence of this tendency to social improvement is to cause prudence and forethought in marrying, and undertaking the support and settlement of a family. If a labourer had been accustomed to abundance of nourishing food, to decent clothing, and to a comfortable home, he would be restrained from marriage by a fear of losing these comforts himself, and of bringing want upon his wife and family. He would thus be induced to defer the responsibilities of marriage until he should be better able to bear them. This is a sound and wholesome principle as regards an individual, and is conducive to the welfare of himself and his family. It is not less advantageous to society at large, and to the class of labourers in particular. The sufferings and demoralization of poverty are avoided, and the population being restrained within reasonable limits, the supply of labour does not exceed the demand. A labourer cannot have too many wants. He should desire good food, good clothing, a cleanly and comfortable home, and education for his children. If the standard of wants could be universally raised, the natural price of labour would rise in proportion; for if each labourer were determined not to render himself unable to gratify these wants, all could command the wages that would supply them. The degree in which this principle operates determines the natural rate of wages and the condition of the working classes. Where it has no influence,

as in Ireland and many parts of Asia, the wages are only sufficient to support life upon the commonest food, and to provide the most squalid clothing and habitations. In more civilized countries, the wants and prudence of the middle classes extend lower in the scale of society, and the labourers want more and enjoy more of the comforts and deencies of life. Happy, indeed, is that country in which the natural price of labour is the highest! In investigating the principles of population in reference to wages and to the condition of the labouring classes, Mr. Malthus did no more than apply the common and recognised maxims of individual prudence to the social state of the poor. He laid down rules for their guidance, which every richer man would require to be observed by his children; and yet he has been ignorantly and vulgarly defamed by many of that class who have only acquired and maintained their present station by acting upon the very principles which he neither suggested nor discovered, but the consequences of which he has only more scientifically explained.

The general market-rate of wages depends upon the ratio which the capital applied to the employment of labour bears to the number of labourers. If that ratio be great, the competition of capitalists must raise wages; if small, the competition of labourers amongst each other, for employment, must reduce them. Whenever the accumulation of capital is proceeding more rapidly than the increase of population, wages will be on the increase, and the condition of the working classes will be continually improving; until some check has been given to the increase of capital, or until the growth of population (which is naturally encouraged by high wages) has altered the relative proportion of capital to labourers, and reduced the market-rate of wages to the natural rate. While the general rate of wages is regulated by these causes, there are various circumstances which, by increasing or decreasing competition for employment, tend to raise or depress the wages paid to persons engaged in particular occupations. Some of the principal of these are—

1. The agreeableness or disagreeableness of the employments.
2. The easiness or cheapness, or the difficulty and expense of learning them.
3. Their constancy or inconstancy.
4. The small or great trust that must be reposed in those who carry them on.
5. The probability or improbability of succeeding in them.

It is not uncommon to hear these circumstances stated as the direct and immediate causes of high or low wages in particular employments; as if in some cases employers voluntarily gave high wages, or the labourer could command them merely on account of the nature of the employment. But the relation of supply to demand will influence wages in particular employments, as it does the price of labour generally, and of other commodities; and the circumstances stated above will obviously tend to increase or diminish the number of competitors for particular employments. More will naturally seek an agreeable trade, easily learned, than one of a disagreeable character and difficult to learn. All descriptions of skilled labour bear a higher price than unskilled labour. The expense of acquiring the knowledge of any art or trade would not be acquired at all, unless the person who had incurred it were better remunerated than others who have nothing to offer except their natural strength and intelligence, which is common to all men: but many cannot incur the expense of learning a trade if they would; others are too indolent, too careless, or too awkward; and thus the class of skilled workmen are not open to the same unlimited competition as other classes of labourers, and are in a condition to command higher wages. Wherever uncommon skill, talent, or other advantages are required, the number of persons actually practising and living by an employment, must be comparatively limited. Most persons are deterred from attempting to learn it by the fear of failure, and many who attempt it do not succeed in gaining their livelihood by it. The few who are really successful can then command an extraordinary reward for the exercise of their peculiar talents or acquirements. The world will enjoy the advantage of them at any

price, not being satisfied with any less degree of excellence. Even if an unusual influx of skilled labourers into any employment should lower the rate of wages, this lower rate is not likely to continue very long, as the superfluous number would seek other employments which offered a higher reward. This result is facilitated by the fact that the ordinarily high price of skilled labour causes a much more expensive mode of living, and thus raises the natural rate of wages of skilled labourers; or, in other words, induces them to regard as necessities a variety of comforts which are beyond the reach of common workmen.

Wages are usually calculated in money, and are called high or low according to the money price actually paid; but the condition of the labourer is obviously affected by the price of commodities as well as by the amount of his wages. If the necessities of life be cheap, low money wages will maintain him in comfort; if they become dearer, higher wages will not improve his condition, but will leave him as he was. Hence it becomes a most important object to inquire whether the price of provisions affects the rate of wages. The disputes which have arisen upon this question would seem to be chiefly caused by attempts to apply a universal law to countries and employments under totally different circumstances. Some contend that as wages are regulated by supply and demand, the price of provisions cannot affect them; while others maintain that the average prices of labour and of food must always, for long periods of years, conform one with the other. It is evident, at the outset, that the former are speaking of the market rate of wages, and the latter of the natural rate; and if this distinction be borne in mind, the two propositions may easily be reconciled. If the market rate of wages be high, it is because the demand for labour is greater than the immediate supply. A fall in the price of provisions could not then lower the rate of wages, because the supply of labour would still be the same; but if the fall were permanent, the condition of the labourer would become so easy, that population would increase, and the supply

of labour would be more abundant. The market rate would thus be brought down to the natural rate, unless capital should be increasing in the same proportion as the supply of labour; and any increase in the price of food must then check the growth of population, limit the supply of labour, and ultimately raise wages. There is the same tendency in the market price of labour to conform to the natural price, as there is in the market value of commodities to conform to their real value. Both labour and commodities are equally capable of increase and diminution, and the varying causes which encourage or check production adjust the proportion between the natural or cost price and the market price. But in some countries the market rate of wages may be very much above the natural rate, and in others nearly the same. In one country capital may be increasing more rapidly than population, and in another not so fast. It is clear that a rise or fall in the price of food cannot influence the rate of wages alike in all these countries. Where the wages are high, and capital is rapidly accumulated, any reduction in the price of food and other commodities is a clear gain to the labourer, and can have only a very remote, if any, effect in lowering wages; but where wages are already reduced to the natural rate, and capital is not increasing faster than population, wages will undoubtedly rise and fall with any permanent increase or diminution in the cost of subsistence.

The question is further affected by the differences which exist in the natural rate of wages in various countries. Where the natural rate is so low as only to afford the bare means of existence, the least rise in the price of food must be fatal to numbers of the labouring population, and, by thus limiting the supply of labour, must raise its price; but where the natural rate is high, the labourers suffer indeed from a rise in the price of food, but their existence is not endangered, the supply of labour is not diminished, and their wages consequently do not rise. From these circumstances it is evident that the precise condition of a country in respect to capital, population, and wages must be ascertained before it



can be determined whether the price of food will affect the money rate of wages. It may however be generally affirmed, that in proportion as the market rate approaches to the natural rate, and the latter to the mere cost of the commonest subsistence, will the price of the necessities of life affect the rate of wages.

When the causes which regulate the price of labour are understood, the folly and injustice of any legislation to fix the rate of wages are obvious. The seller of an article will always endeavour to obtain a high price for it, which the purchaser will only give if he be unable to obtain it for less. Labour is the most important object that man has to buy or to sell. Each will make the best bargain he can, and in this no law ought to restrain him. Laws may purpose to affect wages either directly or indirectly. Direct interference with the rate of wages has been frequently resorted to. By several acts of parliament a legal rate of wages in particular employments was ordered to be settled, from which any deviations either on the part of the employer or labourer were punishable. (See 25 Edw. III. stat. 1; 34 Edw. III. c. 11; 13 Rich. II. c. 8; 11 Hen. VII. c. 22; 5 Eliz. c. 4; 1 James I. c. 6.) Unless all the causes of high or low wages already explained be visionary, it is plain that no law can overrule them and establish a legal rate different from that which natural causes would have produced. It may embarrass the operations of trade, and mischievously disturb the freedom of the labour market; but it cannot attain its immediate end—a compulsory rate of wages. The experience of this fact has long since put an end to any such legislation in this country; but the indirect effect of laws upon wages is still felt. The most pernicious interference with wages ever effected by the indirect operation of a law, resulted from the mode of administering the laws for the relief of the poor. Before these laws were altered in 1834, it was the practice in most parishes, especially in the south of England, to give relief from the poor-rate to labourers in proportion to the number of their children. The effect of such a system of relief was to remove the

ordinary inducements to prudence in regard to marriage, and even to encourage improvidence. The farmers, taking advantage of the addition made to wages from the poor-rate, offered lower wages than would have sustained a family; and the labourer accepted them, because he was indifferent whether he received his pay from his employer or from the parish. The rate of wages thus became fixed, in agricultural districts, so low as barely to support an unmarried labourer; and as the parish would maintain a family, every man saw that by remaining single he would have no chance of improving his condition, and that by marriage he would be equally well and often better provided for. This system of relief injuriously affected both the market rate and the natural rate of wages. The market rate was completely disturbed; for a man was paid not according to the value and demand for his services, but in proportion to the number of his family. The natural rate was continually undergoing depression, because marriages being encouraged without reference to the sufficiency of wages to support a family, population was extraordinarily promoted. At the same time, the property destined to support it was suffering diminution, by being taxed heavily for the payment of comparatively unproductive labour.

The only sound mode of raising wages and improving the condition of a people is to promote and encourage the increase of the general wealth of a country [WEALTH], by every means which legislative science points out as best suited to that end; and at the same time to remove obstructions, and give facilities to the moral and intellectual improvement of the working classes. By these means capital will be increasing with the natural growth of population; while the labourers, with better habits, will be less prone to reckless improvidence, and consequently not so likely to outrun the increase of capital.

It is not unusual for persons in particular employments to desire higher wages, and to enter into combinations against their masters in order to obtain them. Such combinations were formerly prohibited both by the common and sta-

tute law of this country; but since the 5th Geo. IV. c. 95, if unattended with violence or intimidation, they are not unlawful. Unless he has bound himself by a contract, every man has a right to give or withhold his own labour as he pleases; but he has no right to prevent others from disposing of their labour. But the only mode of rendering a combination effectual is to exclude fresh workmen, which frequently can only be done by molestation and threats, which are subversive of the freedom and peace of society. Strikes, temperately conducted, cannot in principle be condemned: being often a necessary protection to the working classes. When masters are not dealing fairly with their workmen, the fear of a strike may often control them; especially as, when acting unjustly, they would find a difficulty in obtaining new hands. But where the cause of a strike or combination is not an occasional dispute concerning wages, but an attempt to limit the number of workmen by compulsory regulations and bye-laws, and to dictate to their employers, it is injurious to trade, and ultimately to the parties themselves. To the labouring classes at large such combinations cannot be beneficial. Whenever they are successful, it is by excluding many competitors, who are, of course, injured by the exclusion. The labour market must become clogged by a mass of exclusive trades, which render it difficult to find employment. The injury suffered by trade in consequence of the artificial limits to the supply of labour and the unnaturally high wages, must also have the effect of diminishing capital, and consequently the means of employing labour.

(Adam Smith's *Wealth of Nations*; Ricardo's *Political Economy and Taxation*; McCulloch's *Principles of Political Economy*; Malthus, *Essay on Population*.)

WAIF. If the goods of any person were stolen, and the thief thinking that pursuit was made after him, fled, and during his flight waived or abandoned the goods, they became waif, and were forfeited to the king. The king could grant the right of waif to others; and many lords of manors were entitled to waif by prescription or presumption of

an antient grant to that effect. No goods could become waif which were not in possession of the thief at the time of his flight. Therefore if he concealed the goods, or placed them in a house, or left a horse at an inn in pledge for his meat, and afterwards fled, the goods did not become waif.

It was necessary, in order to complete the title of the king or lord of the manor to waif, that it should be taken possession of by some one on his behalf; otherwise the original owner was not barred from recovering his goods at any time, and if he seized them first, they remained his property. Various other rules as to waif are merely legal curiosities.

Lord Coke distinguishes between waif which was stolen property, and the goods which were the property of a person who fled for a felony, which goods were always forfeited on proof and finding by a jury of the fact of flight, even though the party were acquitted of the felony. By 7 & 8 Geo. IV. c. 29, s. 57, the court before whom a prisoner is convicted has power in all cases, without restriction as to time, to make restitution of stolen property to the owner, except as to negotiable instruments in the hands of parties who, without notice, have given value for them: and by 7 & 8 Geo. IV. c. 28, s. 5, the jury are no longer to be charged to inquire whether a prisoner fled for treason or felony, and there is now no forfeiture for such flight.

(5 Co., 109; Com. Dig. tit. 'Waife'.)

WALES, PRINCE OF, is the title usually borne by the eldest son or heir apparent of the King or Queen Regnant of Great Britain and Ireland. Before the reign of Edward I. the eldest son of the Prince was called the Lord Prince. The title of Princes of Wales originally distinguished the native princes of that country. Henry III., in the 39th year of his reign, gave to his son Edward (afterwards Edward I.) the principality of Wales and earldom of Chester, but rather as an office of trust and government than as a special title for the heir apparent to his crown. When Edward afterwards became king, he conquered, in 1277, Llewellyn and David, the last native Princes of Wales, and united the kingdom of Wales with

the crown of England. There is a tradition that Edward. to satisfy the national feelings of the Welsh people, promised to give them a prince without blemish on his honour, a Welshman by birth, and one who could not speak a word of English. In order to fulfil his promise literally, he had sent the queen Eleanor, to be confined at Caernarvon Castle, and he invested with the principality her son, Edward of Caernarvon, then an infant, and caused the barons and great men to do him homage. Edward was not at that time the king's eldest son, but on the death of his brother Alphonso, he became heir apparent, and from that time the title of Prince of Wales has ever been borne by the eldest son of the king. The title is not inherited, but is conferred by special creation and investiture; and was not always given immediately on the birth of the heir apparent. Edward II. did not create his son Prince of Wales till he was ten years old, and Edward the Black Prince was not created until he was about thirteen.

The eldest son of the king or queen regnant is by inheritance Duke of Cornwall. Edward the Black Prince was first created Duke of Cornwall on the death of John of Eltham, his uncle, who was the last Earl of Cornwall; and by the grant under which the title was then conferred, in the 11th Edward III., the dukedom is inherited by the eldest living son and heir apparent. If the duke succeed to the crown, the duchy vests in his eldest son and heir apparent; but if there be no eldest son the dukedom remains with the king, the heir presumptive being in no case entitled to it. The Black Prince was also created by his father Earl of Chester and Flint. By the statute 21 Richard II. c. 9, the earldom of Chester was erected into a principality, and it was enacted that it should be given only to the king's eldest son. Although that statute, with all the others in that parliament, was repealed by the 1st Henry IV. c. 3, the earldom has ever since been given together with the principality of Wales.

The titles now borne by the Prince of Wales are "Prince of Wales and Earl of Chester, Duke of Saxony, Duke of Cornwall and Rothsay, Earl of Carriek, Baron

of Renfrew, Lord of the Isles, Great Steward of Scotland." As to the Duchy of Cornwall, see *Civil List*, p. 515.

(Selden's *Titles of Honour*, part ii. c. 5; Connaek's *Account of the Princes of Wales*, 8vo. 1751.)

WAPENTAKE. [SHIRE.]

WAR. [BLOCKADE; INTERNATIONAL LAW.]

WARD. [GUARDIAN; TENURE.]

WARDS. [MUNICIPAL CORPORATIONS, p. 386.]

WARDS, COURT OF. The Court of Wards and Liveries was established by the statute 32 Henry VIII. c. 46, to superintend the inquests which were held after the death of any of the king's tenants by knight's service, for the purpose of ascertaining what lands the tenant died seised of, who was his heir, whether the heir was an infant; and thus what rights accrued to the king in the shape of relief, primer seisin, wardship, or marriage.

By the statute passed in the first Parliament of Charles II. (12 Charles II. c. 24), the Court of Wards was abolished. The preamble of the statute states that it had been intermitted since Feb. 24, 1645. [GUARDIAN; KNIGHT'S SERVICE.]

WARDSHIP. [KNIGHT'S SERVICE.]

WAREHOUSING SYSTEM is a Customs regulation, by which imported articles may be lodged in public warehouses at a moderate rent, without being chargeable with duty until they are taken out for home consumption, and are exempt from duty if re-exported. This regulation gives valuable facilities to trade, is beneficial to the consumer, and ultimately to the public revenue. Where no such system exists, the merchant must either pay the duty on every article as soon as it is landed, or must enter into a bond with sureties for payment at a future time. If he pays at once, he is obliged to advance a large capital, on which interest must be charged to the consumer until the goods be sold; or he must effect an immediate sale, perhaps at an inadequate profit, or even at a loss, in order to raise the funds necessary to pay the duty. If he wishes to defer the payment until the market shall offer an advantageous sale, he may find it difficult to induce persons to become his sureties,

and, when he has succeeded, he may involve them in ruin. The result of these difficulties is that none but wealthy capitalists can import articles on which heavy duties are charged, and the trade in such articles is limited, to the injury of the consumer. The immediate payment of customs duties also obstructs the carrying trade of a country, by making the re-exportation of articles more troublesome as well as more expensive.

The first British statesman who proposed a remedy for these evils was Sir Robert Walpole, in his celebrated Excise scheme, in 1733. His object was to unite the Excise laws with those of the customs as regarded wines and tobacco, and to charge a small duty immediately on importation, and the remainder on being removed from the Excise warehouses for home consumption. Speaking of tobacco, he thus explained his proposal:—"If the merchant's market be for exportation, he may apply to his warehouse-keeper, and take out as much for that purpose as he has occasion for, which, when weighed at the custom-house, shall be discharged of the three farthings per pound with which it was charged upon importation; so that the merchant may then export it without any further trouble. But if his market be for home consumption, that he shall then pay the three farthings charged upon it at the custom-house upon importation; and that then, upon calling his warehouse-keeper, he may deliver it to the buyer, on paying an inland duty of 4*d.* per pound to the proper officer appointed to receive the same." Walpole clearly foresaw the advantages of his scheme to the carrying trade. "I am certain," he said, "that it will be of great benefit to the revenue, and will tend to make London a free port, and, by consequence, the market of the world." This wise plan, unfortunately for English commerce, was not permitted to be carried into effect.

The advantages of the warehousing system were most forcibly pointed out by Dean Tucker in 1748, in his 'Essay on the Advantages and Disadvantages which respectively attend Great Britain and France with respect to Trade,' and afterwards by Adam Smith, in his 'Wealth of

Nations;' but it was not established before 1803 (43 Geo. III. c. 132). The act by which warehousing is now regulated is the 8th & 9th Vict. c. 91. The lords commissioners of the treasury are empowered to determine the ports at which goods may be warehoused, and the warehouses in which particular descriptions of merchandize may be deposited. The various regulations and restrictions under which warehousing is conducted, and the ports to which the privilege is extended, are fully explained in Ellis's 'Customs, Laws, and Regulations,' vol. ii., pp. 240-377, edition 1841; and 'Yearly Journal of Trade,' for 1846, by Charles Pope.

The main objection to Sir Robert Walpole's scheme was that the warehousing was compulsory; but, under the existing law, it is at the option of the importer. Amongst other privileges enjoyed by the merchant, he may remove any merchandize from one port to another, either by sea or inland carriage, to be warehoused again. The revenue is said to have sustained little or no loss in these removals, and it naturally becomes a question, Why should warehousing be confined to seaports? It is obvious that the power of warehousing on the spot must be a great convenience to the merchants and traders of inland towns, and no reason can be assigned for not conceding it, except insecurity to the revenue. But if goods may be removed with safety from London to Hull, they could be removed with equal safety from Liverpool to Manchester, or from Hull to York. Government would incur no expense in erecting warehouses, as they would be provided by private capitalists, in the same manner as the docks and warehouses in London, Liverpool, and other ports. A committee of the House of Commons reported, in 1840, "that the privilege of having bonding warehouses may be conceded to inland towns, under due restrictions and regulations, with advantage to trade and safety to the revenue;" and by act 7 & 8 Vict. c. 31, the privilege was conferred upon Manchester; but no other inland town has obtained a similar concession.

The advantages of warehousing have been understood in various foreign countries as well as in England. So long

since as 1664, M. Turgot established it in France; but it was discontinued in 1668, except for merchandize imported from the East and West Indies and Guinea, or exported thereto. In 1805 the system was re-established in a more extensive manner, but was confined to certain sea-ports, until 1832, when it was extended to several of the principal cities in the interior. Warehousing both at the ports and at certain inland towns is permitted in Holland. In Belgium, Denmark, and other commercial countries, the system has also been adopted. In the United States of America, its adoption was recommended not only on account of its importance to trade, but for a novel reason—its republican tendency. The president, in his message of December, 1842, said that, without such a system of paying the duties, “the rich capitalist, abroad as well as at home, would possess, after a short time, an almost exclusive monopoly of the import trade, and laws designed for the benefit of all would thus operate for the benefit of the few—a result wholly uncongenial with the spirit of our institutions, and anti-republican in all its tendencies.”

**WARRANT.** A warrant is a delegation by A, who has power to do some act, of that power to B. As a man has power to manage his own concerns, he may give a warrant of attorney to another to act or manage on his behalf. A sheriff who has power to arrest, &c., may give a warrant to his bailiff to act for him. A landlord who has power to make a distress upon his tenant may give a warrant of distress to another for that purpose. A magistrate who has authority to bring before him persons who are within his jurisdiction, and reasonably suspected of having committed certain offences, may make a warrant to others to do that act. A warrant should be in writing, and ought to show the authority of the person who makes it, the act which is authorized to be done, the name or description of the party who is authorized to execute it, and of the party against whom it is made; and in criminal cases, the grounds upon which it is made. The sense in which the word warrant is more

generally known relates to criminal matters. A justice of the peace has power within his own jurisdiction to apprehend a person whom he has seen commit an offence in which he has jurisdiction. He may also verbally direct, that is, give a verbal warrant to others to arrest such person in his own presence. He may also give a warrant in writing to apprehend in his absence such person, or any person against whom he has reasonable cause of suspicion from the information of others. The warrant should always be under the hand and seal of the justice. It should be addressed to the constable or constables, or to some private person by name; and the constable or the private person acting within the justice's jurisdiction will not be liable for any of the consequences of obeying a proper warrant. The warrant should name the person against whom it is directed. A warrant to apprehend all persons suspected, or all persons guilty, &c., is illegal; for the pointing out the individual person to be apprehended is the function of the justice, not of the officer. The law as to this was laid down by Lord Mansfield in the case of *Money v. Leach*, 3 Bur. 1742, where the warrant, being of the form called a general warrant, and which had been in use since the Revolution down to that time, directing the officers to apprehend the ‘authors, printers, and publishers’ of the famous No. 45 of the ‘North Briton,’ was held to be illegal and void. The warrant should also set forth the time and place of making it, and the cause for which it is made. A warrant may be to bring the party before the justice who grants it, or before any justice of the same county. A warrant of a justice of one county cannot be executed in another until it has been backed, that is, signed by some justice in that other county; and the same provision has been also enacted with respect to warrants granted in any one of the three kingdoms, and requiring to be executed in any other. But a warrant granted by one of the judges of the Court of Queen's Bench is tested England, and may be executed in any part of the kingdom. A warrant is in force until it has been ex-

executed, if the justice who granted it be still alive. An officer to whom it is addressed is indictable if he neglects or refuses to act upon it. He is justified in apprehending the party at any time, and in breaking open the doors of a house; but he ought first to make known to those within the cause of his coming, his authority, and to request their assistance. After the party is apprehended, the officer ought forthwith to carry him wherever he is directed by the warrant. Much of what has been said as to a warrant of apprehension is equally applicable to a Warrant of Commitment, which is the document by which a justice authorizes a commitment of a party to prison, either to suffer a summary punishment or to await his trial. The same matters are essential as to showing the authority, the parties, the cause, and the purpose of the warrant. A Search Warrant is a document which authorizes a search to be made for stolen goods. (*Burn's Justice.*)

A Warrant of Attorney is a writing by which a man authorizes another to do an act for him, or as his agent or deputy. [LETTER OR POWER OF ATTORNEY.] But the term is most commonly applied to cases where a party executes an instrument of that name, authorizing another to confess judgment against him in an action for a certain amount named in the warrant of attorney. [COGNOVIT.]

WARRANT OF ATTORNEY AND COGNOVIT. [COGNOVIT.]

WARREN. A Free Warren is a franchise which gives a right to have and keep certain wild beasts and fowls, called game, within the precincts of a manor, or any other place of known extent, whereby the owner of the franchise has a property in the game, and a right to exclude all other persons from hunting or taking it. It is stated by Blackstone (2 *Comm.* 417), that originally the right of taking and destroying game belonged exclusively to the king; and it is certain that this franchise, like that of a chase or park, must either be derived from a royal grant, or from prescription, which supposes a grant. The law is thus settled in the Case of Monopolies (11 *Rep.*, 87, b.), where it is said that "none can make a park, chase,

or warren without the king's licence, for that is *quodammodo* to appropriate those creatures which are *feræ naturæ et nullius in bonis* to himself, and to restrain them of their natural liberty." It is the opinion of Spelman (*Gloss.* in voc. *Warrenna*) that free warren was introduced into England by the Normans; and there are many instances of such grants by the English kings subsequent to the Conquest.

Free warren cannot appertain to a manor except by prescription; and even when held with the manor, it does not pass by a grant of the manor without the appurtenances; nor if it be held in gross, will it pass by a grant of the manor and appurtenances. (3 N. & M. 671.) The general rights with respect to game which now belong to lords of manors are vested in them by statute. [MANOR.]

It does not appear that the crown ever had the right of granting free warren to one person over the lands of another, though such a right might be enjoyed by prescription. The right of free warren over the land of another might also arise under other circumstances, as when a man, having free warren over certain lands, aliened them, reserving the warren. (8 *Rep.*, 108.)

A warren may lie open, and there is no necessity of enclosing it, as there is of a park. (4 *Inst.*, 318.) The beasts of warren appear to be only hares and rabbits; and the fowls of warren are partridges and pheasants, though some add quails, woodcocks, and water-fowl. (*Terms de la Ley*, 589.) The grantee of free warren acquired thereby the right to appoint a person to watch over and preserve the game, called a warrener, who is justified in killing dogs, polecats, or other vermin which he finds disturbing or destroying the game (Cro. Jac. 45), and by 21 Edward I. s. 2, entitled *De Malefactoribus*, every forester, parker, or warrener was authorized to kill persons trespassing in forests, parks, or warrens, who resisted and refused to render themselves.

The franchise of free warren still exists in some places, and is viewed as an intolerable remnant of feudalism.

WASTE, says Coke (Co. Litt. 53), "vastum dicitur a vastando, of wasting and depopulating;" but he gives no further definition. The notion of waste seems to be when a tenant for years, by the courtesy, by dower, or for life, so deals with land, or such things as are attached to the soil, as to destroy them or greatly damage them. Accordingly the old action of waste lay against such tenants by him who had the immediate estate of inheritance. Waste is either *voluntary*, which is an act of commission, or *permissive*, which is a matter of omission only.

Voluntary Waste chiefly consists in felling timber trees, pulling down houses, or permanently altering any part of a house, in opening new mines or quarries, in changing the course of husbandry, and in the destruction of heir-looms.

Permissive Waste consists chiefly in allowing the buildings upon an estate to go to decay. It is a general rule that the waste which arises from the act of God is excuseable, as if a house falls in consequence of a tempest. But if the destruction of the house by the tempest has been owing to its being out of repair, the tenant is guilty of waste: and so he will be if he do not repair a house which has been uncovered or damaged only by a tempest. In the same manner, if the banks of a river, while in a state of proper repair, are destroyed by a sudden flood, the tenant is not answerable. (1 *Inst.*, 53 a, b.) The rule applies also to the case of a house burnt down by accident. (6 *Ann. c. 31, s. 6.*) But in these and all similar cases the tenant will still be bound to repair or rebuild, if he has entered into a general covenant to repair. [TENANT AND LANDLORD.]

Tenants in tail, as they have estates of inheritance, are entitled to commit every kind of waste; but this power continues and can be exercised only during the life of the tenant in tail. When it is said that a tenant in tail may commit every kind of waste, the meaning is that he can do those acts to the land which tenants who have not an estate of inheritance cannot do. Tenants in tail after possibility of issue extinct, are not impeachable for waste, but, like tenants for life when their es-

tates are given without impeachment of waste, they may be restrained from wilfully destroying the estate. (2 *Cha. Ca. 32.*) A mortgagee in fee in possession has a right at law to commit any kind of waste, being then considered as the absolute owner of the inheritance; but he will be restrained by a court of equity, which will direct an account of timber cut down, and order it to be applied in reduction of the mortgage debt. (2 *Vern. 392.*) Copyholders cannot, unless there be a special custom to warrant it, commit any kind of waste, and every species of waste not warranted by the custom of the manor operates as a forfeiture of the copyhold. (13 *Rep.*, 68.)

The original remedy for waste was that under the statute of Marlbridge, 52 Henry III. c. 24, which gave to the owner of the inheritance an action of waste against the tenant for life, in which he was entitled to recover full damages for the waste committed. But as this remedy was often found inadequate, it was enacted by the statute of Gloucester, 6 Edw. I. c. 5, that the place wasted should be recovered, together with treble damages for the injury done to the inheritance. No person was entitled to an action of waste against the tenant for life under these statutes, except him who had the estate of inheritance immediately expectant on the determination of the estate for life; so that if there were an existing estate of freehold interposed between the estate for life and that of inheritance, the right of action was suspended. (1 *Inst.*, 53, b.) The action of waste had long given way to the much more expeditious and easy remedy by an action of trespass on the case in the nature of waste, which may be brought by the person in reversion or remainder for life or for years, as well as in fee, and in which the plaintiff is entitled to costs, which he could not have in an action of waste (2 *Saund.*, 252, n. 7); and the writ of waste is now finally abolished by the 3 and 4 Wm. IV. c. 27, s. 36. It seems that there was formerly no remedy for mere permissive waste after the death of the tenant, though if the estate of the tenant was benefited by the injury inflicted, as if money

was derived to it from the sale of trees cut down, an action for the value of the property might have been sustained against the executor. (Cowp. 376.) Now however, by the 3 and 4 Wm. IV. c. 52, s. 2, remedies by action of trespass or trespass on the case are given against the executors of any deceased person for any wrong committed by him in his lifetime against the real or personal property of another within six months of his death, provided the action be brought within six months after the personal representatives have taken upon themselves the administration of the estate.

But the most complete remedy in cases of waste is that in the Court of Chancery, which, upon application to it by bill, will not only direct an account to be taken and satisfaction to be made for the damage done, but will interpose by way of injunction to restrain the commission of future waste. A Court of Equity will grant its assistance against the commission of waste wherever the case appears to require it, even though the plaintiff is not in a condition to maintain an action at law. (3 Atk., 91, 211, 723.) The court will also grant an injunction against waste *pendente lite*; and in such cases it is not necessary that the plaintiff should wait till waste is actually committed; it is sufficient if an intention to commit waste appears, or if the defendant insists upon his right to do so. (2 Atk. 182.)

It has long been usual when estates for life are expressly limited, to insert a clause declaring that the tenant shall hold the lands "without impeachment of waste." These words were originally intended merely to exempt the tenant from the penalties of the statute of Marlbridge, though it has long been settled that they enable him to cut down timber and to convert it to his own use; but he may be restrained in equity from committing malicious waste so as to destroy the estate, or cutting down timber, which serves for shelter or ornament to a mansion-house, or timber unfit to be felled. (2 Vern. 738; 3 Atk. 215.) This is what is called the doctrine of Equitable Waste. The privileges of the tenant for life under the words "without impeach-

ment of waste" are annexed in privity to his estate, and determine with it. Thus it seems that if a lease were made to one for the life of another without impeachment of waste, with remainder to him for his own life, he would become punishable for waste, the first estate being merged in the second. (11 Rep. 83, b.)

Ecclesiastical persons, who hold lands in right of a church, are disabled from committing waste, though, like other tenants for life, they have the right to take from the land materials for necessary repairs. They may not only fell timber and dig stones for that purpose, but have even been allowed to sell timber or stone, when the money was to be applied in repairs; also, though they cannot open mines, they may work those already open. (Amb. 176.) Ecclesiastical persons may be proceeded against for waste in the civil as well as the ecclesiastical courts. It has been held that an action on the case will lie against them for dilapidations, and may be brought by the successor to a benefice either against his predecessor or his personal representatives. (3 Lev. 268; 2 T. R. 630.) It seems doubtful whether the courts of common law have any power to issue a prohibition against the commission of waste by ecclesiastical persons. (1 Bos. and Pull. 105.) But there is no doubt as to the jurisdiction of the Court of Chancery to grant an injunction against any ecclesiastical person whatsoever to stay waste in cutting down timber, pulling down houses, or opening quarries or mines on the glebe. The proper person to make the application is the patron of the living, or, when the living is in the crown, or the application is made against a bishop or a dean and chapter, the attorney-general on behalf of the crown. (3 Mer. 421.) But the patron of the living in such cases has no right to an account, for he cannot have any profit by the living. (Amb. 176.) An injunction has been granted against waste by the widow of a rector during the vacancy of the living. (2 Bro. cc. 5, 62.) By the 56 Geo. III. c. 52, the incumbents of benefices are enabled to cut down timber on the glebe-lands for the purposes of the statute (55 Geo. III.) enabling them to



exchange their parsonage-houses or glebelands.

Tenants in tail and tenants in fee have the inheritance in the land, and they are the real owners. Those who have less estates are in the situation of the Roman Usufructuarius. [USUFRUCTUS.]

(See Bacon's 'Abridgment,' art. *Waste*.)

#### WATER AND WATERCOURSES.

The right of conducting water through one piece of land for the use of another is an incorporeal hereditament of the class of easements, and was known in the Roman law by the name of the *servitus aquæ ductus*. The right of taking water out of the well or pond belonging to another person is an incorporeal hereditament of the class of profits called in the Roman law the *servitus aquæ haustus*. These rights, in our law, must be either derived from a grant or established by prescription. [PRESCRIPTION.]

It is the law of England that water flowing in a stream is originally *publici juris*, that is to say, a thing the property of which belongs to no individual, but the use to all. The legal presumption is that the proprietor of each bank of a stream is the proprietor of one-half of the land covered by the stream, but there is no property in the water. Every proprietor has an equal right to use the water which flows in the stream, and consequently no one can have the right to use the water to the prejudice of any other without his consent. No proprietor can either diminish the quantity of water which would otherwise descend upon the proprietors below, nor throw back the water upon the proprietors above, so as to overflow or injure their lands. For the same reason, no proprietor has a right to use the water of a stream so as to injure its quality to the detriment of other proprietors.

The only modes in which a right to the use of running water, in a manner inconsistent with the common law rights of others can be established, are either proof of an actual grant or licence from the persons whose rights are affected, or proof of an uninterrupted enjoyment of such a privilege for such a period as the law considers sufficient to constitute a

right by prescription. The period of twenty years had been generally fixed upon by the courts of law and equity for this purpose, and the same period has been adopted in the Prescription Act (2 & 3 Wm. IV. c. 71, s. 2). [PRESCRIPTION.] But if water has not been appropriated, it seems that the person who first appropriates and renders it useful acquires a right, and for a violation of such right an action may be maintained on an enjoyment of less than twenty years. It has been decided that after the erection of works and the appropriation by the owner of the land of a certain quantity of the water flowing over it, if a proprietor of other land afterwards take what remains of the water before unappropriated, the first-mentioned owner, however he might before such second appropriation have taken to himself so much more, cannot do so afterwards. (6 East, 219.)

The privilege of a watercourse is not confined to private individuals. It may be vested in a corporation, or may be claimed by the inhabitants of a township or parish. If land with a run of water upon it be sold, the water *primâ facie* passes with the land; but it is laid down by Coke that if a person grants *aquam suam*, the soil will not pass, but only a right of fishing in that water; for the proper words in that case to pass the soil would be, so many acres of land *aquæ coopertas*: whereas the word *stagnum*, or pool, will pass both water and land. (1 Inst., 4, b.) The exclusive right to a flow of water once acquired can only pass by grant as an incorporeal hereditament, and a licence, by parol or otherwise, to use or take the water at any place, may be revoked even without an express power of revocation being reserved, unless works have been constructed and expenses incurred upon the faith of it. (5 B. & Ad., 1.)

When the owners of property have, by long enjoyment, acquired special rights to the use of water in its natural state, as it was accustomed to flow, and not merely a use, which is common to all the king's subjects, an action may be maintained for a disturbance of the enjoyment; but where the injury, if any, is to all

the king's subjects, the only remedy is by indictment. The mere obstruction of water which has been accustomed to flow through a person's lands does not in itself afford a ground of action. The plaintiff in such an action must be enabled to show either that some benefit arose to him from the water going through his lands, of which he has been deprived, or at least that some deterioration was occasioned to the premises by the subtraction of the water; but where the proprietor of the lands can prove that he is injured by the diversion of the water, it is no answer to his action to show that the defendant was the first person who appropriated the water to his own use, unless he has had twenty years' undisturbed enjoyment of it in its altered course. If the injury occasioned by the diversion or obstruction of water is of a permanent nature and injurious to the reversion, an action may be brought by the reversioner, as well as by the tenant in possession, each for his respective loss.

The diversion of watercourses or injury to their banks so as to cause inundation are nuisances against which a court of equity will protect parties by injunction; and if there be a question as to the right to the flow of water, an issue will be directed to try it. Although a court of equity will not in terms decree the banks of rivers, watercourses, or navigable canals to be repaired, the effect of such an order may be obtained by an order that parties shall not be at liberty to use them while out of repair, or against their impeding the use of them by the obstructions consequent upon a state of disrepair. An injunction may also be obtained against conducting the water from one man's tenement upon that of another to his injury by drains or otherwise, in a manner in which it has not been accustomed to flow. And it may be laid down generally, that, with respect to water and watercourses, the aid of a court of equity may be obtained for the purpose either of restraining injury or of quieting possession. (Fonblanque, *On Equity*.)

WAY, *Chimin* (from the French *Chemin*), is a term used to denote either

right, in one person or more, of passing over the land of another, or the space over which such right is exercisable. In the former sense a way is an incorporeal right of the class called EASEMENTS.

There are five kinds of way:—1, A foot-way, for persons passing on foot only; 2, a horse-way, for persons passing on horseback, but including a foot-way; 3, a drift-way, for driving cattle; 4, a carriage-way, for leading or driving carts and other carriages, always including a foot and horse-way, and usually, but not necessarily, including a drift-way; 5, a water-way for ships and boats. [RIVER.]

All these may be either private or public ways. Private ways are enjoyed by particular persons or classes; public ways are open to all persons; hence such a way is said to be *communis strata*, or *alta via regia*—in the language of pleading, a common and public queen's highway.

1. The proper origin of a private right of way is, a grant from the owner of the soil.

Such a grant may be made to a party, or to him and his heirs *in gross*; *i. e.* without respect to any land or house of which he may be the owner or occupier: or to the grantee, his heirs, and assigns, *being* owners of such a house or close; in which case the right granted will be *appurtenant* to the house or close to which the grant is annexed, and the right will pass with the house or close.

The grant of a way may be either express or implied; and in the case of an express grant, the grantor may impose such restrictions upon his grant as he thinks proper. If a man at the time when he conveys part of his land to another, has no access to the land conveyed, except over the land which he reserves, the grant of a right of way over the land reserved is implied. If a man conveys part of his land, and has no access to the part reserved, except over the land conveyed, a right of way over the land conveyed is impliedly reserved. The way so impliedly granted or reserved is called a "way of necessity."

Where no deed can be produced whereby a way is expressly or impliedly cro-

ated, the party who claims the way may, in the case of a long-continued user of the right without evidence of commencement or interruption within the period of legal memory, plead that it has been immemorially enjoyed by him and his ancestors in the case of a way in gross, or by him and all those whose estate he has, in the house or close to which the way is annexed, in the case of a way appendant (*i. e.* immemorially appurtenant).

Until lately also, a lost grant would be presumed in ordinary cases, after an uninterrupted and unexplained user of 20 years. The rule of law as to prescription for ways is settled by 2 and 3 Wm. IV. c. 71, § 2. [PRESCRIPTION.]

A grant of a right of way made by a person who has only a limited estate in the land over which the way passes, is effectual only during the continuance of the estate of the grantor. If a claim to a right of way is set up in respect of the 20 years' or the 40 years' enjoyment mentioned in the statute, if it appear that the land over which the right is claimed has, during the whole or part of the 20 or 40 years, been in the occupation of a party who had a limited estate in such land, not only is no right of way acquired against the reversioner, but no right whatever is gained by the user. (4 Tyrwh. 552; 1 Cro. M. & R., 217.) As to the construction of this act, see 6 N. & M. 230; 4 Ad. & Ell. 369; 11 Ad. & Ell. 688, 788.

The party to whom a private road is allotted under the general enclosure act, has a *statutory* right of way.

If the party entitled to a way becomes the owner of the land over which it passes, the right of way is extinguished if the party has the same extent of interest in the land and in the way. But if the one be held for an estate different in extent of duration from the other, the right is only *suspended* during the union of the two interests. Even where a right of way is extinguished by unity of possession, it will, in some cases, revive upon a severance of that unity, as by partition among parceners, &c. A private right of way may also be extinguished by a deed of release executed by the party

who is entitled to such way; and such a release may be presumed from a non-user for 20 years or from a declaration made by the party that he has no such right.

A way of necessity is limited by the necessity out of which it has arisen. If the party to whom such a way is impliedly granted, or by whom it is impliedly reserved, becomes entitled to some other access to his land, equally direct, the way of necessity is gone.

The particular rights of the grantee of a private way continue to exist notwithstanding the owner of the land may have dedicated it to the public as a highway.

By the general enclosure act (41 Geo. III. c. 102) all roads, private as well as public, within the district, not set out by the commissioners, are declared to be extinguished.

The grantee cannot throw the burthen of repairing the way upon the grantor unless by the terms of the grant, evidenced by the deed or by user, the grantor has engaged to enable the grantee to use the way. In the ordinary case, where the right and the liability to repair the way are in the grantee, he is not entitled to go upon the adjoining land when the direct way is impassable (4 Maule and Selw., 387); whether he may do so where the state of non-repair is caused by the wrongful act of the occupier of the land, or where the liability to repair rests upon the latter, does not appear to have been decided.

If the occupier of the land over which a private way passes, or any other person, obstruct the way, the party entitled to the way may remove the obstruction, and he may also bring an action on the case, or, in some cases, an action of covenant against the obstructor. On the other hand, if the occupier of the land resisting the claim of a right of a way, bring an action of trespass against the person exercising the alleged right, the defendant may plead in justification a title founded upon prescription, grant, reservation, or statute.

II. Between private ways and public ways stand what may be called *quasi public* ways, which partake of the

qualities of both, but differ in some respects from each. By some writers these are classed among private, by others, among public ways; they seem more properly to constitute a distinct intermediate class. Such are ways which the inhabitants of a town, &c., have immemorially used from their town, &c., to a church or market. A right of this description cannot, in modern times, be created. It cannot be the subject of a grant, inasmuch as inhabitants, as such, are not at this day capable of taking any interest by grant; nor can it, like a public way, be created by dedication, as the dedication of a way can only be to the public at large. Such a right therefore can exist only as the consequence of an ancient custom.

III. A highway is created where the owner of the soil has, by express words or by some act done or forbore, declared his intention that the public shall have the use of a way over such soil. The dedication of a way to the public may be by writing or by words; so that it may be inferred from the acts of the party, as the throwing down of fences, or from mere tacit acquiescence where the acquiescing party is in possession of the land, and therefore has the means, if disposed so to do, of preventing the use of the way. In all cases, however, it is necessary that the party dedicating should have a sufficient interest in the land to warrant such dedication. If he has a less estate than a fee-simple, his dedication will not bind the reversioner. But it would also appear that the owner of such a limited estate could not even dedicate a highway to the public for the limited period of his interest in the soil, and that his attempted dedication, however distinctly and formally made, would amount to nothing more than a licence revocable at pleasure.

When there is no express dedication, the presumption of an intention to dedicate, arising out of the conduct of the party, may be rebutted; as by showing that when the public were first admitted a bar or a chain was occasionally placed across the road, whereby passengers might, at times, be excluded; although

it should also appear that the bar, &c., had long been omitted to be used, or that it had been suffered to fall into decay, or had been actually broken down, and that no attempt had afterwards been made to restore it.

A highway is frequently created by statute, principally under inclosure acts.

Whatever may have been the origin of a highway, it cannot, at common law, be destroyed or altered, except after an inquisition taken upon a writ of *ad quod damnum*.

By the common law the burthen of maintaining highways is thrown upon the occupiers of lands and tenements within the parish, or rather within the township in which the way is situated. But particular persons may be bound to repair a highway. This special liability may exist by reason of enclosure (*ratione coarctationis*), against parties who have enclosed the sides, or one side of the road, and have thereby lessened the facilities for breaking out into the adjoining lands where necessary; or by reason of the possession of lands (*ratione tenuræ terræ suæ*), which have by some means become chargeable with the burthen. In the case of a corporation aggregate, a liability to repair may also be established by prescription only, or ancient usage, without enclosure or tenure.

Any obstruction or other nuisance in a highway may be abated or removed by any person who chooses to undertake the task. The wrong-doer may also be proceeded against by indictment as for a misdemeanor; but he is not liable to an action, as he is in the case of a nuisance to a private or to a quasi-public way, except in respect of special damage.

The regulation of highways has frequently been made the subject of legislative interference. The statute now in force is the 5th and 6th William IV. c. 50.

In the case of a way over water, either private, quasi-public, or public, if the course of the water alter by sudden or gradual change, the way is continued over the new course. Every navigable river, arm of the sea, or creek, is a highway for ships and boats. [RIVER.]

WEALTH. [POLITICAL ECONOMY.]

WEALTH OF NATIONS. [POLITICAL ECONOMY.]

**WEIGHTS AND MEASURES.** We shall first describe the English weights and measures as they stood on the last day of the year 1825, immediately before the introduction by law of the Imperial Measures, with some remarks on their states at different times.

*Troy Weight.*—The pound is 12 ounces; the ounce is 20 pennyweights; the pennyweight is 24 grains. The pound is 5760 grains. There is but one grain in use, whether troy or avoirdupois, and a cubic inch of pure water is 252·458 grains (barometer 30 inches, thermometer 62° Fahr.). A cubic foot of water is 75·7374 pounds troy. Only gold and silver are measured by this weight. It is usual to say that precious stones are also measured by troy weight; but, as may be supposed, the measure of these is the grain. The diamond is measured by carats of 151½ to the ounce troy; so that the carat is 3¼ grains, very nearly. In pearls, the old foil measure still exists; for the pearl grain is one-fifth less than the troy grain.

*Apothecaries' Weight.*—In dispensing medicines, the pound troy is divided into 12 ounces, the ounce into 8 drams, the dram into 3 scruples; consequently each scruple is 20 grains. But in buying and selling medicines wholesale, avoirdupois weight is and always has been used. The fact seems to be that in the first instance the more precious drugs, as musk, were weighed by troy weight, in the same manner as the more precious metals; and that the common medicines were dispensed by fractions of what was then the common pound.

*Apothecaries' Fluid Measure.*—In 1836, in the new edition of the 'Pharmacopœia,' the College of Physicians prescribed the use of the following measure:—60 minims make a fluid dram; 8 fluid drams a fluid ounce; 20 fluid ounces a pint. For water this is actual weight as well as measure, since the imperial pint is 20 ounces avoirdupois of water: but for other liquids the fluid ounce\* must merely be considered as a

name given to the 20th part of a pint. The minim of water is as nearly as possible the natural drop; but not of other substances, the drops of which vary with their several tenacities.

According to Dr. Young (who has reduced them from Vega), the apothecaries' grains used in different countries are as follows:—1000 English grains make 1125 Austrian, 956 Bernese, 981 French, 850 Genoese, 958 German, 978 Hanoverian, 989 Dutch, 860 Neapolitan, 824 Piedmontese, 864 Portuguese, 909 Roman, 925 Spanish, 955 Swedish, 809 Venetian.

*Avoirdupois Weight.*—The pound is 16 ounces, and the ounce 16 drams: the modern pound is 7000 grains (the same as the troy grains); whence the dram is 27 grains and 11·32nds of a grain. The hundredweight is 112 pounds, and the ton 20 hundredweight. The cubic foot of water is 62·3210666 pounds avoirdupois. The stone is the 8th part of the hundredweight, or 14 pounds. The ton of shipping is not a weight but a measure, 42 cubic feet, holding 24 hundredweight of sea-water. Down to the statute of Geo. IV. the avoirdupois pound varied a little, according to the notion of the writer: Dillworth makes it 6999¼ grains; Dr. Robert Smith, 7000 grains; Bonnycastle, 6999½ grains. That act declares "that seven thousand such grains shall be, and they are hereby declared to be, a pound avoirdupois."

*Long Measure.*—Three barleycorns make an inch, 12 inches a foot 3 feet a yard, 5½ yards a pole or perch,\* 40 poles a furlong, 8 furlongs (1760 yards) a mile. Also 2¼ inches are a nail, 3 quarters of a yard a Flemish ell, 5 quarters an English ell, 6 quarters a French ell. A pace is 2 steps, or 5 feet; a fathom is 6 feet. The chain is 22 yards, or 100 links; 10 chains make a furlong, and 80 chains a mile. The barleycorn is now disused, and the inch is sometimes divided into 12 lines (as in France), but oftener into tenths or eighths. The yard is frequently called an ell in old books; commonly, Recorde says. Mellis says

the fluid ounce, when it is an ounce, is an ounce avoirdupois.

\* In recent times the word perch has been almost confined to the square perch.

\* It is not noted in the 'Pharmacopœia' that

that both the yard and the ell were divided each into 16 nails. A goad is an old name for a yard and a half. The hand (antiently handful), used in measuring the height of horses, is fixed at 4 inches by 27 Henry VIII. cap. 6. The furlong is probably a corruption of forty-long, from its forty poles.

*Square Measure.*—A square perch is  $30\frac{1}{2}$  square yards; 40 square perches are a rood (formerly also farthendele), 4 roods are an acre. The acre is also ten square chains, or 4840 square yards. Four square perches were antiently called a day's work. The rood\* is the same word as rod: Mellis says four rods make an acre. The old terms which have come down from 'Domesday Book' at latest, the hide, plowland, carucate, and oxgang, are wholly unsettled as to what magnitudes they meant.

The cubic measures, or measures of capacity, do not immediately depend upon the cubic foot, except in the case of timber. Forty cubic feet of rough timber, or fifty feet of hewn timber, make a load.

The preceding measures have been untouched by the act which introduced the imperial measures. The old measures of capacity, the wine measure, ale and beer measure, and the dry measure, are now replaced by the imperial measure.

*Old Dry or Corn Measure.*—The gallon is 268.6 cubic inches. Two pints make a quart, two quarts a pottle, two pottles a gallon, two gallons a peck, four pecks a bushel, two bushels a strike, two strikes a comb or coomb, two coombs a quarter (eight bushels), five quarters a wey or load, and two weys a last. In measuring grain, the bushel is struck; that is, the part which more than fills the measure is scraped off. Most other goods were sold by heaped measure, or as much as could be laid on the top of the measure was added. This heaped measure (which was supposed to give about a third more than the other) was at first allowed in the imperial system,

but has since been abolished. Coals, which must now be sold by weight, were sold by the chaldron. Three bushels make a sack,\* three sacks a vat, and four vats a chaldron.

There was antiently a *dell*, or half-bushel (also called a *tovit*), which makes the binary character of this measure almost complete. In the 'Pathway' we do not find the load or wey,† and the coomb is also called a *cornook* (by Jonas Moore, *canock*), and the quarter also a seam.‡ The 'Pathway,' Mellis, and Moore, &c. mention the *water measure* of five pecks to a bushel (11 Henry VII. cap. 4), and always in conjunction with dry measure: it means a dry measure in use at the waterside, and lime, sea-coal, and salt were measured by it. The common dry bushel was called the Winchester bushel; this name is a remnant of the laws of King Edgar, who ordained that specimens kept at Winchester should be legal standards.

*Old Wine Measure.*—The gallon contains 231 cubic inches. Four gills make a pint, 2 pints a quart, 4 quarts a gallon, 18 gallons a rundlet,  $31\frac{1}{2}$  gallons a barrel, 42 gallons a tierce, 63 gallons a hogshead, 2 tierces a puncheon, 2 hogshheads a pipe or butt,|| 2 pipes a tun. But the pipes of foreign wine depend more on the measures of their different countries than on the above. The rundlet and barrel are generally omitted, but they are both found in writers of the sixteenth century. Mellis gives  $18\frac{1}{2}$  gallons, and the 'Pathway' 18 gallons, to the rundlet. Tierce merely means the third part of a pipe, and the puncheon was antiently called the tercian (of a tun). The pottle (of two quarts) formerly existed. The anker of brandy, a foreign measure of comparatively recent introduction into England, is ten gallons.

*Old Ale and Beer Measure.*—One gallon contains 282 cubic inches. Two

\* In 1596 the sack was four bushels.

† Moore makes six quarters, and Ward ten, in a wey.

‡ This word has been preserved as a measure of glass.

§ For wine and spirits, cider, mead, oil, honey, vinegar.

|| According to Mellis, the butt was a name applied only to half tuns of malmsey or sack.

\* Rod or rood merely means a piece of wood much longer than it is broad or thick. So the word rood frequently was used for the cross; and when Milton says that Satan "lay floating many a rood," he is taking the length of his hero, and not the ground which he covered.

pints make a quart, 4 quarts a gallon, 9 gallons a firkin, 2 firkins a kilderkin, 2 kilderkins a barrel,  $1\frac{1}{2}$  barrels a hogshead, 2 hogsheads a butt, 2 butts a tun. Up to the year 1803, when the two measures were assimilated by statute, this was the beer measure, and the ale measure only differed from it in that 8 gallons made a firkin. Nothing above a barrel is mentioned in the oldest tables, and the pottle (two quarts) is introduced. Two tuns were sometimes called a last.

*Imperial Measure.*—This measure superseded the old corn, wine, and beer measures. The gallon contains 277·274 cubic inches, and is 10 pounds averdupois of water. Four gills are a pint, 2 pints a quart, 4 quarts a gallon, 2 gallons a peck, 4 pecks a bushel, 8 bushels a quarter, 5 quarters a load. Of these the gill and load are not named in the statute, but are derived from common usage. When heaped measure was allowed, three bushels made a sack, and twelve sacks a chaldron. This heaped measure was abolished\* by 4 & 5 Wm. IV. c. 49 and the abolition was re-enacted by 6 Wm. IV. c. 63, which repealed the former. These acts leave the higher measures of wine, &c., to custom, considering them apparently as merely names of casks, which in fact they are, and leaving them to be gauged in gallons. It must be remembered that in former times any usual vessel which was generally made of one size came in time to the dignity of a place among the national measures.

*Wool Measure.*—Seven pounds make a clove, 2 cloves a stone, 2 stones a tod,  $6\frac{1}{2}$  tods a wey, 2 weys a sack, 12 sacks a last. The 'Pathway' points out the etymology of the word cloves; it calls them "*claves* or *nails*." It is to be observed here that a sack is 13 tods, and a tod 28 pounds, so that the sack is 364 pounds. Jeake says this was arranged (31 Edward III. cap. 8) according to the lunar year of 13 months of 28 days each. The reason no doubt was that the multitudes of whose occupation the spinning of wool

formed a part might instantly be able to calculate the supply for the year or month from the amount of the day's work; a pound a day being a tod a month and a sack a year.

*Tale or Reckoning.*—If we were to collect every mode of counting, this would be the largest head of all. The dozen, the gross of 12 dozen, and the score, are the only denominations not immediately contained in the common system of numeration, which are universally received; and in all cases, by a dozen, a score, a hundred, a thousand, &c., were signified different numbers, composed of the arithmetical dozen, score, &c., together with the allowances usually made upon taking quantities of different goods. The "baker's dozen," for instance, which has passed into a proverb, arose from its being usual in many places to give 13 penny loaves for a shilling. The increased dozen, hundred, &c., were sometimes called the long dozen, long hundred, &c.; and this phrase is sometimes heard in our own day, when a dear price is called a "long price." The 12 dozen was formerly called the *small gross*, and 12 small gross made the great gross. The hundred was more frequently 120 than 100, the thousand generally ten hundred. Ten thousand was frequently called a last; and it is to be observed that the word last was frequently (almost usually) applied to the highest measure of one given kind. The *shock* was always 60; the dicar, or dicker, always 10, as the name imports. In measuring paper (1594) the quire was 25 sheets, the ream 20 quires, and the bale 10 reams. By 1650 the practice of reckoning 24 sheets to the quire (now universal) had been introduced as to some sorts of paper. Talefish, as those were called which were allowed to be sold by tale, were (22 Edw. IV. cap. 2) such as measured from the bone of the fin to the third joint of the tail 16 inches at least.

WEIR, or WEAL, is a dam erected across a river, either for the purpose of taking fish, of conveying a stream to a mill, or of maintaining the water at the level required for the navigation of it.

The erection of weirs across public rivers has always been considered a

\* It was abolished in Scotland two centuries ago, and re-enacted by neglect in the act of 1825. But the re-enactment did not obtain for it the slightest introduction, according to Mr. McCulloch.

public nuisance. Magna Charta (c. 23) directs that all weirs for the taking of fish should be put down except on the sea-coast. By the 12 Edw. IV. c. 7, and other subsequent acts, weirs were treated as public nuisances, and it was forbidden to erect new weirs, or to enhance, straighten, or enlarge those which had aforetime existed. Hence in a case where a brushwood weir across a river had been converted into a stone one, whereby the fish were prevented from passing except in flood-time, and the plaintiff's fishery was injured, this was considered to be a public nuisance, although two-thirds of the weir had been so converted without interruption for upwards of forty years. And it was laid down in that and other cases, that though a twenty years' acquiescence might bind parties whose private rights only were affected, yet that no length of time can legitimate a public nuisance. (7 East, 198; 2 B. & Ald. 662.) On the same grounds it will probably be held that the Prescription Act (2 and 3 Wm. IV. c. 71) does not apply to weirs. It appears therefore that no weirs can be maintained on any rivers to the prejudice of the public, or even, as it seems, of individuals, except such as have existed time out of mind, or such as have been erected under local acts of parliament for the navigation of particular rivers.

The provision of the Roman law as to the maintenance of public rivers (*flumina publica*) against any impediment to navigation, or against any act by which the course of the water is changed, are contained in the Digest (43. tit. 12, 13).

**WESTMINSTER ASSEMBLY OF DIVINES.** One of five bills to which it was proposed by the parliamentary commissioners that King Charles I. should give his consent in the negotiations at Oxford (from 30th January to 17th April, 1643) was entitled 'A Bill for calling an Assembly of learned and godly Divines and others to be consulted with by the Parliament for the settling of the government and liturgy of the Church of England, and for the vindication and clearing of the doctrine of the said church from false aspersions and interpretations.' This bill was afterwards converted into

'mons in Parliament,' and passed 12th June, 1643.

The persons nominated in the ordinance to constitute the assembly consisted of a hundred and twenty-one clergymen, together with ten lords and twenty commoners as lay assessors. Several other persons (about twenty in all) were appointed by the parliament from time to time to supply vacancies occasioned by death, secession, or otherwise, who were called superadded divines. Finally, two lay assessors, John Lord Maitland and Sir Archibald Johnson of Warriston, and four ministers, Alexander Henderson and George Gillespie of Edinburgh, Samuel Rutherford of St. Andrew's, and Robert Baillie of Glasgow, were, on the 15th of September, 1643, admitted to seats and votes in the assembly by a warrant from the parliament as commissioners from the Church of Scotland. They had been deputed by the General Assembly, to which body, and to the Scottish Convention of Estates, commissioners had been sent from the two houses of the English parliament, and also from the Assembly of Divines, soliciting a union in the circumstances in which they were placed. This negotiation between the supreme, civil, and ecclesiastical authorities of the two countries gave rise to the Solemn League and Covenant, which was drawn up by Henderson, moderator (or president) of the General Assembly, and, having been adopted by a unanimous vote of that body on the 17th of August, was then forwarded to the English parliament and the Assembly of Divines at Westminster for their consideration.

The ordinance of the Lords and Commons by which the Assembly was constituted only authorized the members, until further order should be taken by the two houses, "to confer and treat among themselves of such matters and things touching and concerning the Liturgy, discipline, and government of the Church of England, or the vindicating and clearing of the doctrine of the same," &c. as should be "proposed to them by both or either of the said houses of parliament, and no other," and to deliver their opinions and advices to the said houses from time to time in such manner and



sort as by the said houses should be required. They were not empowered to enact or settle anything. As the discussions proceeded, a discordance of principles and views upon various points between the ruling Presbyterian party in the Assembly and the growing Independent or Erastian majority in the parliament became more evident; while the progress of events also tended to separate the two bodies more widely every day, and at last to place them almost in opposition and hostility to each other. The Assembly of Divines continued to sit under that name till the 22nd of February, 1649, having existed five years, six months, and twenty-two days, during which time it had met 1163 times. The Scottish commissioners had left above a year and a half before. Those of the members who remained in town were then changed by an ordinance of the parliament into a committee for trying and examining ministers, and continued to hold meetings for this purpose every Thursday morning till Cromwell's dissolution of the Long Parliament, 25th of March, 1652, after which they never met again.

All the important work of the Assembly was performed in the first three or four years of its existence. On the 12th of October, 1643, the parliament sent them an order directing that they should "forthwith confer and treat among themselves of such a discipline and government as may be most agreeable to God's holy word, and most apt to procure and preserve the peace of the church at home, and nearer agreement with the Church of Scotland and other Reformed churches abroad, to be settled in this church in stead and place of the present church government by archbishops, bishops, &c., which is resolved to be taken away; and touching and concerning the directory of worship or Liturgy hereafter to be in the church." This order produced the Assembly's Directory for Public Worship, which was submitted to parliament on the 20th of April, 1644; and their Confession of Faith, the first part of which was laid before parliament in the beginning of October, 1646, and the remainder on the 26th of November in the same

year. Their Shorter Catechism was presented to the House of Commons on the 5th of November, 1647; their Larger Catechism on the 15th of September, 1648. The other publications of the Assembly were only of temporary importance, such as admonitory addresses to the parliament and the nation, letters to foreign churches, and some controversial tracts. What are called their Annotations on the Bible did not proceed from the Assembly, but from several members of the Assembly and other clergymen nominated by a committee of parliament, to whom the business had been intrusted.

The Directory of Public Worship was approved of and ratified by the General Assembly of the Church of Scotland held at Edinburgh in February, 1645; the Confession of Faith, by that held in August, 1647; the Larger and Shorter Catechisms, by that held in July, 1648; and these formularies still continue to constitute the authorized standards of that establishment. The Directory of Public Worship was ratified by both houses of the English parliament on the 2nd of October, 1644; and also the doctrinal part of the Confession of Faith, with some slight verbal alterations, in March, 1648. On the 13th of October, 1647, the House of Commons passed an order that the Presbyterian form of church government should be tried for a year; but it was never conclusively established in England by legislative authority; and even what was done by the parliament in partial confirmation of the proposals of the Westminster Assembly of Divines, having been done without the royal assent, was all regarded as of no validity at the Restoration, upon which event episcopacy resumed its authority without any act being passed to that effect.

It is remarkable that there is not in existence, as far as is known, any complete account of the proceedings of the Westminster Assembly of Divines, either printed or in manuscript. The official record is commonly supposed to have perished in the fire of London. Three volumes of notes by Dr. Thomas Goodwin are preserved in Dr. Williams's Library, London; and two volumes by George Gillespie in the Advocate's Library, Edin-

burgh. Baillie's Letters, however, contain very full details of what was done during the period of his attendance; and a Journal kept by Lightfoot has also been printed. Much information is to be found scattered in various works, such as Reid's 'Memoirs of the Westminster Divines;' Orme's 'Life of Owen;' and especially Neal's 'History of the Puritans.' The only work that has appeared professing to be a 'History of the Westminster Assembly of Divines' is a 12mo. volume, of 390 pages, with that title, by the Rev. W. M. Hetherington, then minister of Torphichen, published at Edinburgh in the year 1843. The reader is referred for a further account of the sources of information on the subject to Mr. Hetherington's Preface, and to a note on p. 521 of Aiton's 'Life and Times of Alexander Henderson,' 8vo., Edinburgh, 1836.

WHIG. Different accounts are given of the origin of this word. Burnet, in his 'History of his Own Time' (i. 43), under the year 1648, says, "The south-west counties of Scotland have seldom corn enough to serve them round the year; and the northern parts producing more than they need, those in the west came in the summer to buy at Leith the stores that came from the north; and from a word *whiggam*, used in driving their horses, all that drove were called *whiggamors* and shorter the *whiggs*. Now, in that year, after the news came down of Duke Hamilton's defeat, the ministers animated their people to rise and march to Edinburgh; and they came up marching on the head of their parishes, with an unheard of fury, praying and preaching all the way as they came. The Marquis of Argyll and his party came and bearded them, they being about 6000. This was called the *whiggamors'* inroad; and ever after that all that opposed the court came in contempt to be called *whiggs*; and from Scotland the word was brought into England, where it is now one of our unhappy terms of distinction."

Whig has long been the name of the one of the two great political parties in the state; the other is 'Tory. [Tory.] The Whigs of the last century and a half are generally viewed as the representa-

tives of the friends of reform or change in the antient constitution of the country, ever since the popular element became active in the legislature, whether they were called puritans, non-conformists, round-heads, covenanters, or by any other name. Down to the Revolution of 1688 the object of this reform party was to make such change; since that event, at least till recently, it has principally been to maintain the change then made. Of course, however, this party, like all other parties, has both shifted or modified its professions, principles, and modes of action within certain limits from time to time, in conformity with the variation of circumstances, and has seldom been without several shades of opinion among the persons belonging to it in the same age. These differences have been sometimes less, sometimes more distinctive; at one time referring to matters of apparently mere temporary policy, as was thought to be the case when the Whigs of the last age, soon after the breaking out of the French revolution, split into two sections, which came to be known as the Old and the New Whigs; at another, seeming to involve so fundamental a discordance of ultimate views and objects, if not of first principles, as perhaps to make it expedient for one extreme of the party to drop the name of Whig altogether, and to call itself something else, as we have seen the Radicals do in our own day. All parties in politics indeed are liable to be thus drawn or forced to shift their ground from time to time; even that party whose general object is to resist change and to preserve what exists, although it has no doubt a more definite course marked out for it than the opposite party, must still often, as Burke expresses it, vary its means to secure the unity of its end; besides, upon no principles will precisely the same objects seem the most desirable or important at all times. But the innovating party, or party of the movement, is more especially subject to this change of views, aims, and character: it can, properly speaking, have no fixed principles; as soon as it begins to assume or profess such, it loses its true character and really passes into its opposite. Accordingly, in point of fact, much of what was once

Whiggism has now become Toryism or Conservatism, the changes in the constitution which were formerly sought for being now attained; and, on the other hand, as new objects have presented themselves to it, Whiggism has, in so far as it retains its proper character, put on new aspects, and even taken to itself new names.

**WIFE; HUSBAND and WIFE.** Many of the legal incidents of the relation of husband and wife, or, as they are called in our law books, *Baron and Feme*, have been already noticed: the mode of contracting the relation under **MARRIAGE**, and of dissolving it, under **DIVORCE**; the provision for the wife out of her husband's real estates, made by the common law and modified by statute, is treated of under **DOWER**; and the right of the husband to a life interest in his wife's estates of inheritance if he survives her and has had by her a child capable of inheriting, under **COURTESY OF ENGLAND**; the provision which may be made for the husband, the wife, and the offspring of the marriage belongs to the subjects of **Settlement and Jointure**; and the nature of the property which the wife may have independently of her husband belongs to the subjects of **Paraphernalia, Pin-money, and Separate Property**. The article **PARENT AND CHILD** shows the relation of both parents to the children of the marriage.

The common law treats the wife (whom it calls a *feme covert*, and her condition *coverture*) as subject to the husband, and permits him to exercise over her reasonable restraint; but the wife may obtain security that the husband shall keep the peace towards her, and also the husband may have it against the wife. The husband and wife are in some respects legally one person. Hence a wife cannot sue separately from her husband for injuries done to her or her property, or be sued alone for debts, unless her husband shall have abjured or been banished the realm; or unless where she is separated from him and has represented herself as a single woman, or where, by particular customs, she is permitted to trade alone, as in London; but even here the husband should be joined as defendant by way of

conformity, though execution will issue against the wife alone. For injuries to the wife's person or property the remedy is by a joint action. They cannot contract with or sue one another; and compacts made between them and all debts contracted towards each other when single (except contracts made in consideration and contemplation of marriage) are made void by their union. This rule does not, however, apply to debts due from the husband to the wife in a representative character as administratrix or executrix. They cannot directly make grants one to another to take effect during the joint lives; nor can the wife, except in the exercise of a power, devise lands to her husband or to any other person unless (as it is said) by the custom of London and York; but the husband may devise or bequeath to his wife property to be enjoyed by her after his death. They cannot give evidence touching one another in civil matters, with this exception, that under the 6 Geo. IV. c. 16, s. 37, a bankrupt's wife may be examined touching the estate of her husband, and she is subject to the usual penalties if she suppresses or falsifies facts. In criminal prosecutions for injuries done by either party to the person of the other, the injured party may be a witness. With the person of his wife the husband takes the liability to her debts contracted before marriage; but those debts are only recoverable during the wife's life. If she dies before him, he is relieved from that responsibility, whatever fortune he may have had with her, except that he must apply to the discharge of such debts any assets which he acquires as his wife's administrator. As the wife is supposed to be under the perpetual control of her husband, she is free from responsibility for offences short of murder and treason committed at his instigation—the evidence of that instigation being his presence during the commission of the offence. For the same reason all deeds executed by her are void, unless by virtue of powers given to her or under the guarantee of certain solemnities the object of which is to ensure her free agency. A disposition by a woman of her property after the commencement of a treaty for

marriage, without the privity and concurrence of her intended husband, is considered by courts of equity to be fraudulent, and will be set aside after the marriage; and by the act 1 Vic. c. 26, passed in 1837, a will made before marriage, either by a man or a woman, is revoked by the subsequent marriage of the party who has made it. [WILL AND TESTAMENT.]

This legal identity cannot be dissolved by any voluntary act of the parties. Consequently no deed of separation, unless it contains an immediate and certain provision for the wife, and no advertisement or other public notice will relieve a husband from the liability to provide his wife with necessaries fitting to her rank in life (the question of fitness being decided by a jury), or from the duty of paying the debts contracted for such necessaries, if she has been driven from his house by his misconduct. On the other hand, a wife cannot recover at law from her husband from whom she lives apart any allowance which he has contracted with herself to pay her in consideration of the separation, if he desires that their union should be renewed. A deed of separation is not a sufficient answer to a suit promoted by either party for restitution of conjugal rights; nor is it an answer to the charge of adultery committed either before or after separation, for though "the ecclesiastical court does not look upon articles of separation with a favourable eye, yet they are not held so odious as to be considered a bar to adultery." (Haggard's *Consistory Reports*, i. 143.)

A divorce can only be obtained by act of parliament, as explained in ADULTERY and DIVORCE. A separation may be obtained by sentence of divorce pronounced by the ecclesiastical courts for conjugal infidelity or cruelty on the part of the husband; but this is not a dissolution of the marriage.

Considerable difficulty has arisen out of the conflict between the law of England and Scotland, in consequence of marriages celebrated in England having been dissolved by judicial sentence in Scotland. Some of the cases are given in Burge's *Commentaries*, &c. i. 668, &c.

The sentence of separation relieves the husband of his responsibility for his wife's debts contracted after the sentence is pronounced, or, in case of his wife's adultery, contracted after the discovery of the adultery and the consequent separation; for if no separation takes place, or if the husband abandons his usual residence to his wife and her paramour, he will be liable to debts contracted by her with tradesmen who are ignorant of the facts. By the common law, also, a husband is not liable for the debts of his wife contracted after she has quitted his house without sufficient cause, and he has given particular notice to the tradesmen that he will not pay her debts. Nor is he liable for debts contracted while she is living in open adultery. If the separation is obtained by the wife on account of the cruelty or adultery of her husband, the spiritual court compels him to maintain her (if her separate property will not enable her to live according to her rank in life) by requiring him to make her an allowance proportionate to his means. [ALIMONY.]

Though a woman cannot take by direct grant from her husband, she can take by a grant made by her husband to trustees for her benefit. She can also acquire lands by descent and by purchase [PURCHASE].

By the common law the husband acquires all the personal property which the wife has at the time of the marriage, and also all that accrues to her during the marriage. He also acquires all her chattels real or leasehold interests; yet if a settlement has not been made on her expressly in consideration of her fortune, those portions of her personal property which consist of securities for money or beneficial contracts, and her chattels real, survive to herself, if the securities have not been realised and the chattels real have not been aliened, during his life by her husband: a marriage settlement does not deprive her of this right with regard to things in action acquired subsequently to the execution of the settlement, unless it expressly reserves to the husband future as well as present personality. If a husband requires the intervention of a court of equity for the purpose of reducing

into possession his wife's property, the court will require him to make on her a settlement proportionate to the benefit which he derives. Usually one half of the fund is settled upon the wife and children, but the court takes all the circumstances into consideration; especially whether any settlement already exists; and it will not grant its aid to the wife who demands a settlement, if she is the born subject of a state which gives the whole property of the wife to the husband. The adultery of the wife deprives her of her equity (unless she has been a ward of court married without the consent of the court); but her delinquency will not induce the court to vest the whole of her property in her husband because he does not maintain her. The court will secure the property for the benefit of the survivor and the children. On the other hand, in case of the cruelty of the husband, or his desertion of his wife, the court will award to her and her children not only the whole principal, but the interest of the property in question.

The husband is entitled during his life to the profits of his wife's freehold estates of which she is seised at the time of marriage or during the coverture. By the common law a husband might aliene his wife's real estate by feoffment or fine, or lease it for her life or that of the tenant, and she was left to her remedy if she survived him, or her heir at law had his remedy if the husband survived: if they neglected that remedy, the alienation by the husband was good; but by the 32nd Henry VIII. c. 28, the wife or her heir may enter and defeat the husband's act. By that statute the lease of lands held by a man in right of his wife, or jointly with her, is good against husband and wife if executed by both; the lease may be for years or for life, but it must relate to land usually leased, it must not be by anticipation or in consideration of a fine; it must reserve a fair yearly rent to the husband and wife and heirs of the wife; and the husband is restricted from aliening or discharging the rent for a longer term than his own life. If however the wife receives rent after her husband's death upon any lease of her estate improperly granted by him, she confirms

that lease. A wife's copyhold estates are forfeited to the lord by any such acts of her husband as are ruinous to the estate (*e.g.* waste), as destroy the tenure (*e.g.* an attempt to convert it into a freehold), or otherwise deprive the lord of his rights, as a positive refusal to pay rent or perform service. But courts of equity will relieve the tenant when the forfeiture is not wilful or can be compensated. The enfranchisement of the wife's copyhold estate by the husband does not alter the mode of descent, but the estate will go to the wife's and not to the husband's heirs. Husband and wife to whom freehold or copyhold lands are given or devised take in entirety, and not as joint tenants; they are jointly seised, but neither can aliene without the consent of the other, and the lands will belong to the survivor.

As to the wife's **DOWER**, see that article.

The Statute of Distributions (22 & 23 Car. II. c. 10) gives to the widow of an intestate husband (if her claim has not been barred by settlement) one-third of his personal property when there is issue of the marriage living, and one-half when there is none. But the widow of a freeman of the city of London, or of an inhabitant of the ecclesiastical province of York (excepting the diocese of Chester), if the husband die intestate, leaving personal property more than sufficient to pay his debts and funeral expenses, is entitled to the furniture of her bedchamber and her apparel (*widow's chamber*), or to 5*l.* in lieu of it if her husband's personalty is worth 2000*l.*; then the personal estate is divided into three parts, whereof one-third goes to the widow, one to the children, and one (the *dead man's share*) to his administrator. Of this last share the widow is entitled under the Statute of Distributions, which regulates the division of it, to one-third if there is a child, and one-half if there is not. The benefit of this custom cannot be taken from the widow by any fraudulent device, such as a gift by the husband to a third party whilst he was at the point of death; or a gift with a reservation that it should only take effect after his death.

Marriage revokes powers of attorney

previously granted by the wife, and disables her from granting them; but it does not disable her from accepting such a power, or from acting on one granted to her before coverture. She may also be attorney for her husband. She can bequeath her personal estate by will under a power.

The separation of husband and wife, and the effect of deeds made by them either in consequence or in contemplation of such an event involves many difficult questions. The ecclesiastical courts consider all deeds of separation and all covenants in the nature of such deeds to be void. The courts of law, however, not only have supported such deeds against the husband, but have enforced a covenant made by him with his wife's trustees to pay her an annuity as a separate maintenance in the event of their future separation, with the approbation of the trustees. Whether such a covenant would now be supported by the courts of law is very doubtful. In order to render a deed of separation valid, it ought to be made by the husband and wife, with trustees for the wife, and any provision made in it by the husband ought to be for a valid consideration, such as a covenant on the part of the trustees to relieve the husband from the wife's debts or maintenance; the cruelty, or adultery, or desertion of the husband is a consideration, because the wife might have sued him in the ecclesiastical courts, and obtained alimony. But courts of equity will not interfere to enforce such deeds, though by a strange inconsistency they will enforce the husband's covenant for a separate maintenance if made through the intervention of trustees, and indeed in certain rare cases if made between the husband and wife alone. Nor is the adultery of the wife a sufficient answer to her claim to the separate maintenance. It is doubtful whether the wife can anticipate or dispose of this kind of allowance; the more so, because it ceases if the cohabitation is renewed, or is only prevented by the perverseness of the wife. The ecclesiastical courts permit husband and wife to be sued separately.

A queen-regnant is legally a feme sole

or single woman: and so is a queen-consort as to property.

(Roper's *Law of Husband and Wife* edited by Jacob.)

WIFE, ROMAN. [MARRIAGE.]

WIFE. (*Scotland*). The moveable or personal estate of a husband and wife is under the administration of the husband; according to the phraseology of the law it is called "the goods in communion," because on the dissolution of the marriage by the death of either party, it falls to be so divided that if there be issue of the marriage a third, and if there be no issue a half, goes to the nearest of kin or to the legatees of the deceased, whether husband or wife, the remainder being the property of the survivor. During the continuance of the marriage the husband's right, as administrator, is in all respects equivalent to the right of a proprietor; and whether the common property has been acquired by himself or by the wife, it is entirely at his disposal, in so far as that disposal is intended to have effect during his lifetime. His right of bequeathing it is limited by the Scottish law of succession. [WILL.] As the husband has the administration of the wife's property, he is responsible not only to the extent of the goods in communion, but personally, for the wife's obligations, whether contracted before or after marriage. Action against a wife for debts contracted before marriage is laid against herself, but her husband is cited as administrator of the goods in communion, and while all "diligence" or execution for attaching property falls on the goods in communion, he is liable to whatever execution may proceed against the person. In case of the dissolution of the marriage before execution, the execution will proceed only against the portion of the goods in communion which falls to the share of the wife or to her representatives, and will not lie against the person of the husband. No suit can be raised against a married woman unless the husband has been made a party. The wife cannot of herself enter into a contract exigible by execution against the goods in communion and the person of her husband, unless in certain cases in which by general law or by practice she holds an

agency. To this effect she is *præposita negotiis domesticis*, and whatever debts she incurs for household purposes are debts against the husband. The husband may discharge himself from debts so incurred, by suing out an "inhibition" against her in the Court of Session. The sphere of her authority may be enlarged by her husband intrusting to her the management of any department of business, and she will then, as ostensibly authorized to represent him in the transactions relating to the business, render him responsible for the performance of her acts, as a principal is responsible for those of his agent. A wife's agency will not extend, without special authority, to the borrowing of money.

Heritable property (a term nearly equivalent to that of real property in England) belonging to either party is in the administration of the husband. He can, however, grant no lease of his wife's heritable property, to last beyond his own life, without her concurrence. On the other hand, from the date of the proclamation of the banns, all deeds granted by the wife are null if they do not bear the husband's concurrence. His right of administration, including the necessity for his concurrence in the wife's deeds, may be excluded, either generally or in relation to some particular estate. The former can only take place by his resigning his *jus mariti* in an antenuptial contract of marriage; the latter may be accomplished by the special exclusion of the *jus mariti* in the title of any estate conveyed to the wife. Every deed executed by a wife is presumed to have been executed under the coercion of her husband, and is reducible as a deed executed under the effect of force and fear, unless the wife ratify it by oath before a magistrate. On occasion of the ratification, not only must the husband be absent, but the act of ratification must bear that he was so.

A separation of married parties may take place either by judicial interference or voluntary contract. Actions of judicial separation proceed before the court of session, which in such cases exercises its consistorial jurisdiction as succeeding to the commissary court. Personal violence or acts physically or morally in-

jurious on the part of the husband, will justify a judicial separation at the suit of the wife. That the husband insisted on retaining a servant with whom he had held an illicit intercourse before the marriage was held a ground of judicial separation. (*Letham v. Letham*, 8th March, 1823, 2 S. D. 284.) In judicial separations at the instance of the wife, an alimentary allowance is awarded to her against the husband, proportioned to his means. When a husband abandons his wife, an alimentary allowance will be awarded to her without a judicial separation. A voluntary separation may take place by mutual agreement, but in such a case an alimentary allowance will not be awarded unless it has been stipulated for.

It is in a wife's power, however, notwithstanding a voluntary separation, to sue for judicial separation if the previous conduct of the husband towards her would justify it, and thus obtain an award of alimony. The husband whose wife is either judicially or voluntarily separated from him ceases to be responsible for the debts incurred by her after the date of the separation. Her own property is liable to execution for her obligations, but not her person, unless her husband be living out of Scotland, in which case it has been decided that a wife transacting business on her own account is liable to diligence against her person, or arrest and imprisonment. (*Orme v. Diffors*, 30th November, 1833, 12 S. D. 149.) The husband has the uncontrolled custody of the children of the marriage during pupillarity. The court of session will interfere for their protection in the case of their personal ill-usage, or of danger of contamination, but not on the ground of a special estate being settled on a child by a third party.

On the dissolution of a marriage by the death of either party, an anterior question to that of the distribution of the property is, whether the marriage was permanent. A permanent marriage is one which has lasted for a year and part of a day, or of which a living child has been born. In the case of dissolution by death of a marriage not permanent, there is a question of accounting, and the property of the parties is, as nearly as cir-

cumstances will permit, so distributed as it would have been had no marriage between them been solemnized. In the case of a permanent marriage, the moveable property is divided as above stated, the survivor getting a half, if there is no issue, and a third if there is issue. Of any real property in which a wife dies infest, if there has been a living child born of the marriage, and if there is no surviving issue of the wife by a former marriage, the widower enjoys the life-rent use: this is called "the courtesy of Scotland." A widow enjoys the life-rent of one-third part of the lands over which her husband has died infest, by way of

Terce." The distribution of the property, personal or heritable, may be otherwise arranged by antenuptial contract, or equivalents to the property to which a party would succeed may be made by the settlements of the deceased.

On the dissolution of marriage by divorce [Divorce], the offending party forfeits whatever provisions, legal or conventional, he or she might be entitled to from the marriage: and the innocent party, at whose instance the suit of divorce is brought, retains whatever benefits, legal or conventional, he or she may have become entitled to by the marriage. It follows, that when the divorce proceeds at the suit of the wife, she obtains, at the date of the decree of divorce, the provisions which, as above, she would be entitled to on the death of her husband; and that, on the other hand, if the suit be at the instance of the husband, the wife not only loses her right to such provisions, but forfeits to the husband whatever property she may have brought into the goods in communion.

**WILL AND TESTAMENT.** Before the passing of the 32 Hen. VIII. c. 7, commonly called the Statute of Wills, and the 34 & 35 of Henry VIII. c. 5, there was no general testamentary power of freehold land in England, but the power of making a will of personal property, appears to have existed from the earliest period. Yet this power did not originally extend to the whole of a man's personal estate; but a man's goods, after paying his debts and funeral expenses, were divisible into three equal parts, one

of which went to his children, another to his wife, and the third was at his own disposal. If he had no wife or no children, he might bequeath one half, and if he had neither wife nor children, the whole was disposable by will (2 Bl. Comm., 492; Fitzherbert, *Nat. Brev.*, 122). The law however was gradually altered in other parts of England, and in the province of York, the principality of Wales, and in the city of London more lately by statute, so as to give a man the power of bequeathing the whole of his personal property. At present by the 1 Viet. c. 26, for the amendment of the law with respect to wills (whereby the former statutes there enumerated with respect to wills are repealed, except so far as the same acts or any of them respectively relate to any wills of estates *pur autre vie* to which this act does not extend), it is enacted that it shall be lawful for every person to devise, bequeath, and dispose of, by his will, executed as required by that act, all real and personal estate which he shall be entitled to either at law or in equity at the time of his death. Great alterations have been introduced into the law of wills by this statute; but as it does not extend to any will made before the 1st of January, 1838, it is necessary to consider the law as it stood previous to the act.

In general all persons are capable of disposing by will of both real and personal estate who have sufficient understanding. The power of the king to make a will is defined by the 39 & 40 Geo. III. c. 88, s. 10. By the former statute of wills, married women, persons within the age of twenty-one years, idiots and persons of nonsane memory, were declared incapable of making wills of real estate. These disabilities also applied to a bequest of personal estate, except that infants of a certain age, namely, males of fourteen and females of twelve might dispose, by will, of personalty; and that by the 12 Car. II. c. 21, s. 8, a father under twenty-one might, by a will attested by two witnesses, appoint guardians to his children. But, by the second section of the new Wills Act, no will made by any person under the age of twenty-one years is valid; and no



will made by any married woman is valid, except such a will as might have been made by a married woman before the passing of the new act. The disability of a married woman is not absolute. She may make a will of her personal property if her husband consents to that particular will, and it will be operative if he survive her. The validity of a lunatic's will depends upon the state of his mind at the time of making it. Persons born deaf and dumb are presumed to be incapable of making a will, but the presumption may be rebutted by evidence. Blindness and deafness alone do not produce incapacity. Devises of lands by aliens are at least voidable, the crown being entitled, after office found, to seize them in the hands of the devisee, as it might have done in those of the alien during his life.

Previously to the late act the general power of testators was subject to exceptions. Customary freeholds and copyholds were not within the Statute of Wills, and therefore, unless where devisable by special custom, could in general be passed only by means of a surrender to the use of a will. By the 55 Geo. III. c. 192, the want of a surrender was supplied in cases where it was a mere form, but the act did not apply to cases where there was no custom to surrender to the use of a will, nor to what are called customary freeholds. A devisee or surrenderer of copyholds could not devise before admittance, though an heir-at-law might. Conditions were not devisable, nor were rights of entry or action, nor contingent interests when the person to be entitled was not ascertained: lands acquired after the execution of the will also did not pass by it; but by section 3 of 1 Viet. c. 26, the power of disposition by will extends to all real and personal estate, and to all estates, interests, and rights to which the testator may be entitled at the time of his death, though acquired subsequently to the execution of his will. There is no restriction as to the persons to whom devises or bequests may be made except under the 34 & 35 Hen. VIII. c. 5, which forbids devises of lands to bodies politic and corporate. Exceptions to this statute have been introduced by

the 43 Geo. III. c. 107, and 43 Geo. III. c. 108, which authorize devises of lands to the governors of Queen Anne's Bounty, and for the erection or repair of churches or chapels, the enlargement of churchyards or of the residence or glebe for ministers of the Church of England. Alienage cannot be properly called an incapacity to take by devise, as the devised lands remain in the alien till office found, when they vest in the crown. By the 9 Geo. II. c. 36, no lands or personal estate to be laid out in the purchase of or charged on land can be given to any charitable use by way of devise. [MORTMAIN.] By the 40 Geo. III. c. 98, no disposition of property can be made by will or otherwise, so as to accumulate the income for a longer period than for twenty one years after the death of the settlor, or during certain minorities [ACCUMULATION]; and by what is called the rule against perpetuities, no property can be settled by deed or will so as to be inalienable for more than a life or lives in being, and twenty-one years afterwards.

Before the 1 Viet. c. 26 wills of personal estate might even be nuncupative, that is to say, might be declared by the testator without writing before witnesses, provided they were made in conformity with the directions contained in the 19th section of the Statute of Frauds (29 Car. II. c. 3). A will of freehold lands of inheritance was required to be executed in the manner prescribed by the 5th section of the Statute of Frauds, which required it to be signed by the party devising, or by some other person in his presence and by his express direction, and to be attested and subscribed in the presence of the deviser by three or more credible witnesses. The term "credible," which gave rise to much discussion under the old law, is omitted in the new act, and it is enacted in the 14th section that no will is to be void on account of the incompetency of any attesting witness. By the 15th section gifts to attesting witnesses or their wives or husbands are declared void. This is an extension of the 25 Geo. II. c. 26, which related only to wills which at that time required the attestation of witnesses, that is to say, to wills of real estate. The words as to

wives or husbands are new. The signature of the testator was not required for the validity of a will of personalty or of copyholds, whether the instrument was in his own hand-writing or in that of another. But by the 9th section of 1 Vict. c. 26, no will, whether of real or personal estate, is to be valid unless it be in writing, and signed at the foot or end by the testator or by some person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses must attest and subscribe the will in the presence of the testator, but no particular form of attestation is necessary. Section 10 enacts that all appointments made by will are to be executed in the manner above prescribed, and are to be valid when so executed notwithstanding the nonobservance of any other ceremonies required by the power under which the appointment is made. By the 11th and 12th sections, it is declared that the act is not to affect the wills of soldiers on actual service or of mariners at sea, which are to remain subject to the particular provisions made respecting them by the 11 Geo. IV. and 1 Wm. IV. c. 20. Questions formerly arose as to what was a publication of a will, but section 13 of 1 Vict. c. 26 enacts that no other publication shall be requisite than execution in the manner prescribed.

It is the rule in England, that a will of lands is regulated by the law of the country in which the lands are. The place where and the language in which such a will is written are unimportant: the locality of the lands is the only point to be considered. A will made in France and written in French, of lands in England, must contain expressions which when translated into English would properly designate the lands in question, and must be executed according to the forms required by the English law. Lands in England which belong to an English subject domiciled abroad and dying intestate, will descend according to the English law. With respect to personalty, on the other hand, in cases both of testacy and intestacy, the law is different. If a

British subject becomes domiciled abroad, the law of his domicile at the time of his death is the rule which the English courts follow in determining the validity of his will and administering his personal property in England, and *vice versa* in the case of a foreigner dying domiciled in England. Cases sometimes arise in which it is difficult to determine what was the domicile at the time of the death of the party, and consequently what rule is to be followed in the distribution of his personal estate. If an Englishman domiciled abroad has real property in England, he ought, on account of the difference of the doctrine with respect to real and personal property, to make two wills, one duly executed according to the English law for devising his real estate, and another framed according to the law of his domicile for the disposal of his personal property.

A will is a revocable instrument. It was an established rule of law that the will of a *feme sole* was revoked by her marriage, but marriage alone was not considered a revocation of the will of a man; though marriage and the birth of a child, whom the will would disinherit, conjointly were admitted by the courts to have that effect, on the ground that these circumstances together produced such a change in the testator's situation, that it could not be presumed he could intend any previous disposition of his property to continue unchanged. By section 18 of the new act every will made by a man or woman is revoked by marriage, except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of appointment, pass to the heir, personal representative, or next of kin of the appointor. And by the 19th section no will is to be considered as revoked by any presumption of intention on the ground of an alteration in circumstances. By the 20th section no will or codicil is revocable except as above mentioned, or by another will or codicil executed in the manner required by the act, or by a writing declaring an intention to revoke, executed in the same manner, or by burning, tearing, or otherwise destroying the will by the testator himself, or by some other

person in his presence, and by his direction, with intent to revoke. By the 21st section no obliteration, interlineation, or other alteration made in any will after execution is to have any effect, except in so far as the words or effect of the will previous to the alteration cannot be made out, unless the alteration be executed as a will, such execution to be in the margin opposite or near to the alteration, or to a memorandum referring to the alteration. By the Statute of Frauds witnesses to a will were required to sign in the testator's presence, but it was not necessary that he should sign in their presence, whereas by section 6 of that act a mere revocation in writing must have been signed by the testator in presence of the witnesses, but they were not required to sign in his presence. This inconsistency is now removed. The 21st section alters the law as to the effect of obliterations where the words remain legible, and of cancellation by drawing lines across the whole or any part of the will. These acts will now be of no effect unless properly executed and attested. By the 23rd section no conveyance or other act made or done subsequently to the execution of a will of real or personal estate, except an act of revocation, is to prevent the operation of the will upon such estate or interest as the testator has power to dispose of at the time of his death: and by the 24th section every will is to be construed with reference to the real and personal estate comprised in it, so as to take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appear on the will.

Republication of a will is in fact a re-execution of it, being a repetition of the ceremonies required for its original validity: before the recent act a devise of lands could only be republished by signature and attestation by three witnesses, while with respect to copyholds and personalty a will might be republished without any formal execution, and even by the mere parol acts and declarations of the testator.

The 22nd section of the act provides that no will or codicil, or any part thereof, which shall have been in any manner revoked, shall be revived otherwise than

by the re-execution thereof, or by a codicil executed in manner required by the act, and showing an intention to revive the same; and when any will or codicil which shall be partly and afterwards wholly revoked, shall be revived, the revival is not to extend to such parts as had been revoked before the revocation of the whole, unless a contrary intention appear. Under the old law, if a second will or codicil which revoked a former will was afterwards cancelled, the first, if it had been kept undestroyed, was held to be revived. It had previously been determined (4 Ves., 610) that a subsequent codicil, merely for a particular purpose and confirming the will in other respects, did not amount to a republication of parts of the will revoked by a former codicil. This section extends the doctrine to the case where a will had been first partially and afterwards wholly revoked.

Estates or interests in property created by way of executory devise or bequest, that is to say, such as are made expectant on the determination of prior estates in the same property, may be, like estates created by way of remainder in a deed, either vested or contingent. So far as depends upon the nature of the limitations themselves, the same rules are in general applicable to executory devises or bequests as to remainders; but testamentary instruments are not construed with the same strictness as deeds, and in determining the question of vesting or contingency, many considerations, depending on expressions in the will or other circumstances appearing upon the face of it, are admitted as affording presumptions of the intention of the testator. It is impossible here to give any enumeration of the numerous rules which have been laid down on this subject, and which are of course liable to be modified according to the circumstances of each particular case. It may however be observed generally that when a future gift is preceded by a gift of the immediate interest, it is to be presumed that the enjoyment only is postponed, and that the future gift is vested in interest; whereas when there is no gift of the immediate interest, the contrary presumption obtains: and again, that when the enjoyment of a gift is post-

poned, not on account of circumstances personal to the object of the gift, but with a view to the circumstances of the estate, the gift is to be presumed vested. With respect to pecuniary legacies, some distinctions, borrowed from the civil law, are admitted which have no place as to real estate. One of these distinctions is that where futurity is annexed to the *substance* of the gift, the vesting is in the mean time suspended: but where the *time of payment* only is future, the legacy vests immediately. If however the only gift is contained in the direction to pay, this case is to be regarded as one in which time is annexed to the substance of the gift. When a future gift of a principal sum is coupled with a gift of the interest in the mean time, a strong presumption exists in favour of vesting. It is generally considered that a very clear expression of intention must exist in order to postpone the vesting of residuary bequests, on the ground that intestacy may often be the consequence of holding them to be contingent.

Great changes have been introduced in the law, as to the interpretation of wills by the above-mentioned 24th section of the act, which declares that wills are to be construed to speak as if they were executed immediately before the death of the testator, and the six following clauses. The 25th section enacts that, unless a contrary intention appear on the will, a residuary devise shall include all estates comprised in lapsed and void devises. This alters the former law, whereby such estates devolved on the heir. The 26th clause enacts that a general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands, unless a contrary intention appear. This also effects a considerable alteration in the law of devises. Formerly neither copyholds (unless surrendered to the use of the will) nor leaseholds would pass by a general devise of lands or other general words descriptive of real estate, unless the testator had no freehold lands on which the devise might operate. Since the statute of the 55 Geo. III. c. 192, which dispenses with the necessity of surrenders in certain cases, copyholds stood upon nearly the same footing as freeholds, in respect to

a general devise; but leaseholds still continued subject to the old rule of law. By the 27th section, unless a contrary intention appear, a general devise of real estate and a general bequest of personal estate are respectively to include estates and property over which the testator has a general power of appointment. It was never considered necessary in the execution of a power of appointing real estate, whether general or special, to refer expressly to the power. It was sufficient if the intention to exercise it appeared from a description of the property in the will or by other means. If the testator had no other lands which answered the description, a general devise would have been a good execution of the power; but it was otherwise if he had any other lands which would satisfy the terms of the devise. The enactment applies only when the testator has a general power of appointment. Where the power is limited or special, it seems that the old rule of construction will still hold. As to personal property the rule was, that there must be some reference to the power, on the somewhat unsatisfactory ground that as any person must be supposed possessed of some personalty, there was enough to make a general bequest operative without reference to the property comprised in the power. With respect to devises, it seems that the old rule must still prevail where the power is special or limited. By the 28th section a devise of real estate without words of limitation is, unless a contrary intention appear by the will, to be construed to pass the fee. This clause introduces a very considerable alteration of the old law, under which, in accordance with the doctrine that the heir was not to be disinherited by implication, it was settled that a devise of lands without words of limitation conferred on the devisee an estate for life only, notwithstanding the appearance of a contrary intention in other parts of the will. The 29th section enacts, that in any devise or bequest of real or personal estate the words "die without issue," "die without leaving issue," or "have no issue," or any other words of the like import, shall be construed to mean a want or failure of issue

at the time of the death, and not an indefinite failure of issue, unless a contrary intention appear; except in cases where such words mean, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. Under the old law, when a testator gave an estate to A and his heirs, and directed that if A died without issue it should go to B, though his meaning in most cases was that B should have it unless A had issue living at the time of his death, the word "issue" was held to comprise descendants of every degree existing at any distance of time, and the consequence was, that where the subject of the devise was real estate, A took an estate tail and acquired the absolute dominion over the property, and where it was personalty the ulterior disposition to B was void for remoteness.

By the 30th section every devise of real estate (not being a right of presentation to a church) to a trustee or executor is to be construed to pass a fee simple, unless where a definite term of years or an estate of freehold less than the fee simple is expressly given to him. And by the 31st section trustees under an unlimited devise to them, when the trust may endure beyond the life of a person beneficially entitled for life, are to take the fee. When the limitation in a will was made to a trustee by way of use, he took the legal estate by the operation of the statute of uses, without reference to the nature of the trust. But in other cases the question was determined by the intention of the testator, as collected from the nature of the trust; and the trustee was considered to take only that quantity of estate which the exigencies of the trust required. Such a rule of construction was obviously of very difficult operation, and it was often not easy to determine in whom the fee was vested at any given period, and therefore who were the proper parties to deal with the property and to join in a conveyance of it. The enactments contained in the two last-mentioned sections will in a great measure remedy this inconvenience.

It follows from the nature of wills that the devises and bequests contained in them are liable to failure from the death of the devisee or legatee before the testator. This is called the doctrine of lapse. It applies equally to devises of real estate and to bequests of personalty. It is a general rule that words of limitation to heirs or executors superadded to a gift have no effect in preventing lapse in case of the devisee or legatee dying before the testator, for they are considered not as words of gift, but merely as indicating the legal devolution of the property. When the gift is to several persons as joint tenants, unless all the objects die before the testator, there can be no lapse; for as joint tenants are each takers of the whole, any one existing at the death of the testator will be entitled to the whole. The same is the case where the gift is to a class, unless where the individuals of the class were ascertained before the lapse. Two changes have been introduced into the law of lapse by the new act. The 32nd section enacts that devises of estates tail shall not lapse, but that where the devisee in tail dies during the life-time of the testator, leaving issue, the devise shall take effect as if he had died immediately after the testator, unless a contrary intention appear by the will: and, by the 33rd section, gifts to children or other issue who shall die before the testator, having issue living at the testator's death are not to lapse, but, if no contrary intention appear by the will, are to take effect as if the persons had died immediately after the testator. As a will of personalty operated upon all the property of that kind belonging to the testator at the time of his decease, there could obviously be no intestacy with regard to any part of the personal estate while there was a valid residuary bequest. The same will now be true of wills of real estate in which there is a valid residuary devise, so that there will no longer be room for many of the questions that arose as to whether the residuary devisee took beneficially or as a trustee, and as to the devolution of real estate directed to be sold.

If an ambiguity exists on the face of

a will, or, as it is technically termed, is patent, parol evidence cannot be admitted to remove it, because to admit evidence to explain what the will has left uncertain would be in effect to make a new will by parol. If the ambiguity is not apparent on the face of the will, but arises from circumstances disclosed when an attempt is made to carry the will into effect, it may be removed by evidence of the same nature.

(Powell *On Devises*, and Jarman's *Notes to Bythewood's Precedents, Wills*.)

**WILL, ROMAN.** A Roman will was called Testamentum. Testamentum was defined by the jurists of the Imperial period to be "a legal mode of a man's declaring his intention in due form, to take effect after his death." The person who made such declaration was called Testator.

The power of making a Roman testament only belonged to Roman citizens who were sui juris, a rule which excluded a great number of persons: those who were in the power of another, as sons not emancipated, and daughters; impuberes; dumb persons, deaf persons, insane persons, and others; and, as a general rule, all women. The circumstances under which a woman could make a will were peculiar; and they would require a very particular statement. A male of the age of fourteen years complete, unless under some special incapacity, could make a valid will. A female, so far as respected age only, acquired this capacity on the completion of her twelfth year.

Originally Roman citizens made their wills at Calata Comitia, which were held twice a year for this purpose. It is not said that these wills were made in writing; and it is here assumed that they were made at the Calata Comitia only for the purpose of securing the proper evidence of the testator's intention. It has been maintained by Niebuhr, that wills were made at the Calata Comitia in order that the Gentes might give their consent to the testamentary disposition, but this conjecture is not supported by evidence. Wills could also be made in procinctu, that is, by a soldier under arms and in presence of the enemy. Another mode of testamentary disposition was introduced, apparently for the purpose of

preventing intestacy. If a man, says Gaius (ii. 102), had neither made his will at the Calata Comitia nor in procinctu, and was threatened with sudden death, he transferred, by the form of mancipation, his familia, that is, his patrimonium, to a friend, and told him what to give to each person after his death: this was called the testamentum per æs et libram, because the transfer was effected by mancipation. Thus it appears that the testamentum per æs et libram was a formal transfer of the property during the lifetime of the owner to a person who undertook to dispose of it as he was directed. As it was a substitute for the testament made at the Calata Comitia, it is a probable inference that it only differed from the testament made at the Comitia in wanting that publicity. The two old forms of testamentary disposition, adds Gaius, fell into disuse, and that per æs et libram became the common form. Originally the formal purchaser of the testator's estate (familie emptor) occupied the place of the heres at a later time; when Gaius wrote, and long before his time, the old form of testamentary disposition was retained as to the familie emptor, but a heres was appointed by the will to carry into effect the testator's intention. The formal purchaser was only retained out of regard to ancient custom, and the institution of a heres became necessary to the validity of a will.

The form of testamentary transfer per æs et libram is described by Gaius (ii. 104). As in other acts of mancipation, so in this, there were five witnesses of full legal age (puberes). These five witnesses are considered by some modern writers to be the representatives of the five classes of the Roman people, and that as the original act of mancipation was rendered valid by the consent of the five classes, so here it was rendered valid by the presence of the five witnesses. In this article it is supposed that they were present as witnesses only.

Written wills, as already observed, were not necessary, for neither mancipation nor the institution of a heres required a writing. But written wills were the common form during the later Republican and the Imperial period. Wills

were written on tablets of wood or wax; hence the word "cera" (wax) is often used as equivalent to *tabula*. A Roman will was required to be in the Latin language until A.D. 439, when it was enacted that wills might be written in Greek. A Roman will in the later periods was sealed and signed by the witnesses. The sealing consisted in making a mark with a ring or something else on the wax, and the names were added. The seals and names were on the outside, for according to the old law there was no occasion for the witnesses to know the contents of the will. The old practice was for the testator to show the will to the witnesses, and to call on them to witness that what he so presented to them was his will. It was not unusual for a man to make several copies of his will, and to deposit them in some safe keeping. (Dig. 31, tit. 1, s. 47, and the case of a legacy put to Proculus.) Augustus, the emperor, made two copies of his will (Sueton., *Aug.* 101); and also his successor Tiberius (Sueton., *Tib.* 76). The Vestal Virgins were often the keepers of wills, or they were deposited in a temple or with a friend. (Tacit. *Ann.* i. 8.) At the opening of the will the witnesses or the greater part, if alive and on the spot, were present, and after acknowledging their signatures the will was opened.

It has been mentioned that in order to make a Roman will valid, it must appoint or institute a *heres*. The *heres* was a person who represented the testator, and who paid the legacies which were left by the will. He stood in the place of the *familiæ* *emptor*, or formal purchaser of the property in the old form of will. A *heres* might be appointed in such words as follow: "Titius *heres* esto," "let Titius be my *heres*;" or "Titium *heredem esse jubeo*," "I will Titius to be my *heres*." Generally all Roman citizens who could make a will could be *heredes*; but persons could be *heredes* who could not make a will—slaves, for instance, and others who were not *sui juris*.

Fraud in the case of wills and other instruments was punished by severe penalties under a *Lex Cornelia*.

The development of the *Edictal* or *Prætorian* law at Rome introduced a less

formal kind of will. If there were seven proper witnesses and seven seals, and if the testator had the power of disposition both at the time of making his will and at the time of his death, the edict dispensed with the ceremony of *mancipatio* and gave to the *heres* or *heredes* the *bonorum possessio*. This mode of testamentary disposition existed under the Republic, and accordingly a man could either make his will by the civil form of *mancipatio*, or he might make it after the *prætorian* form with seven seals and seven witnesses, without any *mancipatio*. The form of testamentary disposition by *mancipatio* was ultimately superseded by the more convenient *prætorian* form. The legislation of Justinian required seven male witnesses of proper age and due legal capacity; and it was sufficient if the testator declared his will orally before these witnesses.

A Roman will, as already observed, was valid if the testator had a disposing power at the time of making his will and at the time of his death. It follows that his will, though made at any time before his death, was sufficient to dispose of all the property that he had at the time of his death. This rule of law is now established in the case of an English will by the recent act (1 Vict. c. 26) as to real property; it always applied in the case of an English will to personal property. But an English will is valid if the testator subsequently loses his disposing power, as for instance if he become insane. A Roman will was not valid under such circumstances; and it also became invalid in other cases.

In order to render a Roman will valid, it was necessary that the *heredes sui* of a man (his sons and daughters were in the class of *heredes sui*) should either be appointed *heredes* or should be expressly excluded from the inheritance. A will which was illegal at the time of being made was *testamentum injustum*, that is, "*non jure factum*," not made in due legal form. A will which was *justum* might become invalid; it might become *rumpitum* (broken) or *irritum* (ineffectual).

A second will duly (*jure*) made rendered a former will invalid (*rumpitum*); and it was immaterial whether the second

will took effect or not. If it was duly made, it rendered a former will of no effect, and if the second will did not take effect, the testator died intestate.

If a testator sustained a *capitis diminutio* after making his will, that is, if he lost any part of his status of a Roman citizen which was essential to give him a full testamentary power, the will became *Irritum*, ineffectual. A prior will might become *Ruptum* by the making of a subsequent will; and such subsequent will might become *Irritum* in various ways; for instance, if there was no heres to take under the second will.

Though a will became *Ruptum* or *Irritum*, and consequently lost all its effect by the *Jus Civile*, it might not be entirely without effect. The *bonorum possessio* might be granted by the *Prætorian edict*, if the will was attested by seven witnesses, and if the testator had a disposing power, though the proper forms required by the *Jus Civile* had not been observed.

The rule of Roman law which required *heredes sui* to be expressly exheredated applied to posthumous children. The word *Postumus* (from which our word posthumous has come) simply signified "last;" and a child born after the date of his father's will was *Postumus*. If he was born after the father's death he would also be born after the date of his father's will and consequently would be *Postumus*. If a *suius heres* was born after the making of the will, and was not recognised as heres or exheredated in due form, the will became *Ruptum*. This rule of law was thus expressed: "*adgnascendo rumpitur testamentum*." There were also cases in which a will might become *Ruptum* by a quasi-adgnatio.

A testament was called *Inofficiosum* when it was made in due legal form, but not "*ex officio pietatis*." Thus when a man did not give the hereditas or a portion of it to his own children or to others who were near of kin to him, and when there was no sufficient reason for passing them by, the persons so injured might have an action called *Inofficiosi Querela*. The persons who could maintain this action were particularly defined by the legislation of Justinian. If the *Testamentum* was declared by the competent

authorities to be *Inofficiosum*, it was rescinded to the amount of one-fourth of the hereditas, which was distributed among the claimants.

The ground of the *Inofficiosi Querela* is explained by Savigny (*System des Heutigen Röm. Rechts*, ii. 127, &c.). When the testator in his will passed by persons who were his nearest kin, it was presumed that such persons had merited the testator's disapprobation. If this was not so, it was considered that the testator had by his will done them a wrong, and the object of the action was to get redress by setting the will aside. The main object, however, was the establishment of the complainant's character, to which the obtaining of part of the testator's property was a subsidiary means. The expression *Testamentum Inofficiosum* occurs in *Cicero* and in *Quintilian*; but it is not known when the *Inofficiosi Querela* was introduced.

A Roman codicil (*Codicilli*, for the word is not used in the singular number till a late period under the Empire) was a testamentary disposition, but it had not the full effect of a will. A heres could not be appointed or exheredated by *codicilli*; but *codicilli* were effectual so far as to bind a heres, already appointed by a will, to transfer a part or the whole of the hereditas to another. *Codicils* were in fact useless unless there was a will prior or subsequent, which confirmed them either retrospectively or prospectively. (*Gaius*, ii. 270; *Dig.* 29, tit. 7, s. 8; *Pliny*, *Ep.* ii. 16, which has been sometimes misunderstood.)

*Codicilli* were originally informal writings; it was only necessary to prove that they were by the testator. The later legislation required *codicilli* which were in writing to have five witnesses, who subscribed their names to the *codicilli*.

The subject of Roman wills is of great extent, and it involves questions of considerable difficulty. The principal authorities have been mentioned in this article, to which may be added *Ulpian*, *Fragmenta*, tit. 20; *Dig.* 28, tit. 1, &c.; 29, tit. 1, &c.; *Cod.* 6, tit. 23; *Das Testament des Dasunius*, *Zeitschrift f. Gesch. Rechtsu.*, article by Rudorff on a frag-



mentary inscription which contains a Roman will. The date of the will is A.V.C. 862 or A.D. 109, in the twelfth year of Trajan.

**WILL.** (*Scotland.*) The right of bequest in Scotland is confined to moveable or personal property. It does not extend to heritable or real property—which comprehends lands and tenements, fixtures, those appurtenances of a family mansion (such as the pictures, plate, and library) which are called “heirship moveables,” the machinery in mines and manufactories, the stock on farms, and every description of security or other right over any of these kinds of property. Settlements may be made of heritable property in the manner which will be described below, but it is a principle of the greatest importance, and one the neglect of which is often productive of the most serious consequences, that no such settlement can be made in the form of a will. All persons of sound mind above the age of puberty (14 in males, and 12 in females) may execute wills; and persons under guardianship, as wives and minors who have curators may do so without the consent of their guardians. Until very lately the will of a bastard was ineffectual, and the moveable goods of such a person, lapsing to the crown on his death, were distributed by a gift in exchequer; but this peculiarity has been abolished by 6 & 7 Wm. IV. c. 22. A verbal or “nuncupative” will, if uttered in the presence of two witnesses who bear testimony to it, is valid to the extent of a hundred pounds Scots, or *8l. 6s. 8d.* sterling; and if the bequest should exceed that sum, the legatee may recover to the extent of the hundred pounds Scots. A will, sufficiently formal in all points to prove its terms and its date, must be executed in the following manner:—The grantor’s usual signature must be given at the end, and, if there be more than one sheet, on each sheet: the usual practice is to sign each page. Any interpolation in the margin must have the christened name or the initial letter of it above, and the surname or its initial letter below. He must either sign in the presence of, or show and acknowledge his subscription to, two witnesses, who

must be males, above fourteen years old. The witnesses sign the deed at the end, each putting after his name the word “witness.” The will must terminate with “a testing clause,” setting forth that the grantor has signed the deed in presence of the witnesses, who are named and so designed as to be distinguishable from other persons, at a certain place on a certain day. The testing clause must contain the name and description of the writer of the deed, the number of pages it consists of, the number of words written in erasure or interlined, and the number of marginal notes. There are some of these formalities of which the absence is fatal to the deed—others in which it will throw the onus probandi on the holder.

Where the will is holograph, or written by the grantor himself, it does not require to be attested; but if it be not attested, it in the first place does not prove itself to be holograph, and the statement that it is in the handwriting of the grantor must be proved by extraneous evidence to be true; and, secondly, it does not prove its own date; and if there be any other competing title, it will be presumed to have been granted at such a time as will give that title the preference. If the party cannot write, he can execute a will through a notary, who receives authority in presence of two subscribing witnesses to sign for the testator, and describes the transaction in his notarial docquet. A clergyman of the Established Church of Scotland may act as a notary for the signing of a will. It is usual to nominate an executor of the will, but it is not essential to do so; and if there be no one named, an executor is supplied by operation of law. Wills executed by persons domiciled out of Scotland, if they be according to the form which would carry such property in the place where they were executed, will be effectual to convey moveable property in Scotland; but no will, whatever be the law of the place where it is made, can dispose of heritable property in Scotland. The last dated will is the effectual one, and all others are considered as revoked by it in so far as they are inconsistent with it.

The peculiar feature of the law of Scotland out of which arises the circumstance

that heritable or real property cannot be bequeathed is, that no deed conveying such property is effectual unless it be expressed in what are called "dispositive terms," or terms making over the property at the moment of the signing of the deed. Thus the terms "I grant, convey, and make over," are sufficient to carry heritance; but the terms "I leave and bequeath" are not. The peculiarity arose during the time when the holder of a fief could not part with it to another person unless that person were accepted as a vassal by the feudal superior. A conveyance not intended to take effect until after the cedent's death did not admit of the superior's using his privilege, and the method of creating a settlement of landed property was constructed on the forms by which the feudal usages were gradually adapted to the conveyance of land from a seller to a purchaser. A deed of settlement relating to landed property must thus be essentially a conveyance *de presenti*, but to accomplish the purposes of a virtual bequest, the following methods have been adopted by conveyancers:—1, the granter may convey to himself, with a "substitution" or remainder to his destined successor; 2, he may grant a direct conveyance, reserving to himself the life-rent; 3, he may grant such a conveyance, reserving power to alter. It is of the nature of a conveyance of land that to be effectual, delivery of the deed to the assignee, or an equivalent, must have taken place, and thus a settlement of land to be effectual after the granter's death must have been delivered to the person favoured by it, or some one for his behoof, or must have been entered in a public register, or must contain a clause dispensing with delivery. The formalities above mentioned as necessary to the execution within Scotland of wills carrying moveables are necessary to settlements conveying heritable property in Scotland, but with this difference, that in the settlement of heritable property, if the party cannot write, the deed must be executed by two notaries before four witnesses; and in this case a clergyman cannot act as notary. To be an effectual deed, a settlement of landed property must also contain authority for

completing the feudal title to the property, and this authority will vary with the nature of the holding. When however there is an effectually attested deed, containing in clear terms a conveyance *de presenti*, although the formalities necessary for completing the feudal investiture be omitted, and it be thus insufficient of itself to carry the estate, it may give a right of action to compel the heir-at-law to make it over. If the heir-at-law found upon the deed, he is by that act bound to make good its provisions in favour of all other persons. Thus, if the deed be in the form of a bequest, and in itself incapable of carrying heritance, if it convey moveable property to the heir which he would not have otherwise succeeded to, he is bound, if he take advantage of it, to fulfil its destination of the heritance. No settlement of heritable property to the prejudice of the heir-at-law can be validly granted on a death-bed. Three elements are necessary to constitute the legal exception of death-bed: 1st, that the granter was ill of the disease of which he died when he granted the deed; 2nd, that he died within sixty days after executing it; and, 3rd, that he did not go to church, or to a market, unsupported, during the sixty days. The act 7 Wm. IV. & 1 Vict. c. 26, and the other enactments relating to wills in England, do not apply to Scotland.

**WINE AND SPIRIT TRADE.** The consumption of wine and spirits in the United Kingdom amounts in round numbers to about 28 million gallons, the duty on which, about 9,000,000*l.*, is equal to above one-sixth of the whole revenue. The average consumption of wine of all kinds is about 6 million gallons, though in some years it has fallen much below this quantity. Of foreign and colonial spirits the annual consumption is about 3½ million gallons; and of British spirits about 20 million gallons, though in 1842 it fell below this quantity from various causes. The stock of wine in bond is usually equal to two years' consumption: in January, 1843, the quantity under bond in the port of London was 7,004,347 gallons, and there were 4,440,246 gallons at the outports. At the same date there were 6,081,205 gallons of foreign and

colonial spirits in bond, of which 3,589,672 gallons were in London, and 2,491,533 at the outports.

The rate of duty on wines and spirits has had great influence on the consumption. In 1700 the average consumption of wine in England was nearly one gallon per head, whereas it is now less than a fourth of a gallon. Prior to the Methuen Treaty the wines consumed in this country were almost entirely the produce of France, but although the duty on French wines was equalised in 1831, the annual consumption only amounts to one gallon amongst sixty people. In France the consumption of wine is 19 gallons per head; and in Holland, with moderate duties, the consumption of French wine is one gallon per head. Mr. Porter states in his 'Progress of the Nation,' that there are wines produced in France better adapted to the English taste than the French wines usually drunk here, and that they could be imported at sixpence a bottle without duty. If, as he remarks, wines of fair quality and flavour could be sold by retail at one shilling the bottle, the consumption would no doubt be very large; but the duty alone is at present not less than a shilling a bottle, and the consequence is that the consumption of French wines is chiefly confined to those of the first class. But beer is the common drink in England, and it would pro-

bably continue to be so, if wines were as cheap in England as in France. The present duty on all foreign wines is 5s. 6d. the gallon; the duty on Cape wines is 2s. 9d. the gallon. The number of gallons of foreign wines retained for home consumption in the year ending January 5, 1845, was 6,838,684, of which 2,887,501 were Portugal wines, 2,478,360 were Spanish wines, and 473,789 were French wines; the rest were Cape, Sicilian, and other sorts. As another illustration of the effect of high duties in checking consumption, it may be stated that the duty of 22s. 10d. on foreign spirits was less productive than the duty of 11s. 1d. in 1801; though if the rate of consumption had followed the increase of population, the duty would have been 2,465,767*l.* more than the amount actually received. The present rates of duty on British spirits are from 500 to 600 per cent.; on Irish and Scotch corn spirits (whisky) about 200 per cent.; and on Irish and Scotch malt spirits (whisky) 300 per cent. and upwards. By the last Tariff (1846) the duty on foreign spirits is reduced to 15s. the gallon; the duties on colonial spirits, on home-made spirits, and on foreign wines were not altered by it. The number of gallons, including overproof, of foreign and colonial spirits, of all sorts, retained for home consumption, was—

Year.	England.	Scotland.	Ireland.	United Kingdom.
1842 . . .	3,099,542	71,927	29,546	3,201,015
1843 . . .	3,061,699	71,820	28,438	3,161,957
1844 . . .	3,134,350	78,142	30,114	3,242,606
1845 . . .	3,431,614	84,478	33,797	3,549,889

In the year ending January 5, 1845, the quantities of foreign and colonial spirits retained for home consumption were—

	Gallons.
Rum . . . .	2,198,592
Brandy . . .	1,023,073
Geneva . . .	14,864
Other sorts . .	6,077
	<hr/>
	3,242,606

For many years the number of distillers in England has not exceeded twelve. In 1835 six distillers in London and the

vicinity paid 1,030,202*l.* duty out of 1,420,525*l.*, the total amount of duty paid by distillers in England. The number of distillers in Scotland in the above year was 260, and there were 87 in Ireland; but the number of rectifiers in England, Scotland, and Ireland is a proof of the different tastes of the people in each country. In England, in 1835, there were 108 rectifiers, in Scotland 11, and in Ireland 19. Very little brandy or rum is consumed either in Scotland or Ireland, the pure home spirit without any artificial flavouring being preferred. Nearly the whole of the spirit distilled

in England passes through the hands of the rectifier, who, by the addition of various ingredients, produces the compound called gin; and above 500,000 gallons of English spirit are flavoured in imitation of French brandy.

Malt and unmalted grain together are used in the English distilleries; six-sevenths of the Scotch spirits are made from malt, and the remainder from malt and unmalted grain; in Ireland about a tenth is from malt, and, with the exception of a few hundred gallons from potatoes, the remainder is from malt and unmalted grain. Of the British spirits consumed

in 1845 the number of gallons made from malt only was 6,668,759, the remainder (16,453,829) having been made from a mixture of malt with unmalted grain. The number of gallons made from malt only was 5,368,697 in Scotland; 717,483 in England; and 582,579 in Ireland. The duty was 7s. 10d. per gallon on English spirit, 3s. 8d. on Scotch spirit, and 2s. 8d. on Irish spirit.

The number of persons engaged in the various trades of distilling, compounding, and retailing spirits, in 1840, was as follows:—

	England.	Scotland.	Ireland.
Distillers and rectifiers . . .	106	215	112
Dealers not retailers . . . .	2,922	452	364
Retailers—premises rated			
Under 10l. . . . .	15,431	10,364	11,054
10l. and under 20l. . . . .	19,692	4,112	3,078
20     "     25 . . . . .	3,303	321	287
25     "     30 . . . . .	2,199	178	189
30     "     40 . . . . .	3,684	207	271
40     "     50 . . . . .	2,349	85	148
50 and upwards . . . . .	6,022	246	296

The dealers in foreign wine in the same year were as follows:—

	England.	Scotland.	Ireland.
Not being dealers in spirits or beer	1,793	28	173
Dealers in beer but not in spirits	44	31	252
Dealers in wine, spirits, and beer	22,113	2,800	1,964

	England.	Scotland.	Ireland.
Passage vessels with retail licences	254	93	25

The following table, showing the consumption of British spirits in different years during the present century, is abridged from vol. iii. of Porter's 'Progress of the Nation':—

	England. galls.	Scotland. galls.	Ireland. galls.	United Kingdom. galls.
1802 . . .	3,464,380	1,158,558	4,715,098	9,338,036
1812 . . .	3,622,970	581,524	4,009,301	9,213,795
1821 . . .	4,125,616	2,385,495	3,311,462	9,822,573
1831 . . .	7,434,047	5,700,689	8,710,672	21,845,408
1838 . . .	7,938,490	6,259,711	12,296,342	26,486,543
1841 . . .	8,166,985	5,989,905	6,485,443	20,642,333
1842 . . .	7,956,054	5,595,186	5,290,650	18,841,890
1843 . . .	7,724,051	5,593,798	5,546,483	18,864,332
1844 . . .	8,234,440	5,922,948	6,451,137	20,608,525
1845 . . .	9,076,381	6,441,011	7,605,196	23,122,588

In 1841 the consumption of British spirits was at the rate of 0·51 gallons per head in England, 2·28 gallons in Scotland, and 0·80 gallons in Ireland. Before the commencement of the temper-

ance movement in Ireland, the rate of consumption in that country was 1·52 gallons per head. The quantity of spirits charged with duty in Ireland fell from 12,296,342 gallons, in 1838, to 6,485,443,

in 1841, the only change of duty being an addition of 5 per cent. The further diminished consumption in 1842-3 is partly apparent, as the increase of duty from 2s. 8d. to 3s. 8d. a gallon led to illicit distillation. By this addition of a shilling a gallon duty, the minister anticipated an increased revenue of 250,000*l.*; instead of which, in the year ending 5th April, 1843, there was a positive decrease of 7361*l.*, the quantity of spirits brought to charge having fallen to 4,813,045 gallons, or 1,715,901 gallons less than in the previous year. On the 5th of April, 1841, the number of persons in gaol for illicit distillation was 48; on the same day in 1843 the number was 368. The financial mistake was so obvious that, in the session of 1843, an act was passed (6 & 7 Vict. c. 49) for returning to the old scale of duty.

The duty on rum from British colonies is 9s. 4d. the gallon. The consumption of rum has been declining for many years in England, and is insignificant in Scotland and Ireland. With the same duty in each country the contribution per head to the revenue, in 1841, was 1s. 3½*d.* in England, 2¼*d.* in Scotland, and 0½*d.* in Ireland. In 1831, with nearly the same duty as in 1841 (9s. instead of 9s. 4d.), it was 2s. 2d. in England, 5½*d.* in Scotland, and ¼*d.* in Ireland. The same rate of duty on foreign spirits, in 1841 yielded 1s. 7½*d.* per head in England, 5*d.* in Scotland, and 0½*d.* in Ireland. The quantity of all descriptions of wine consumed in the United Kingdom was less in 1841 than in 1801. In 1840, out of 100 gallons, there were consumed—of Portugal wines, 26·7 gallons; Spanish, 46·9; Madeira, 1·3; Teneriffe, 0·4; Sicilian, 8·1; Cape, 7·7; French, 7·4; Rhenish, 1·1. The consumption of the wines of Portugal was 75 per cent. of the total quantity half a century ago.

(Porter's *Progress of the Nation*, vol. iii.; *Report of Commissioners of Excise Inquiry on British Spirits; Parliamentary Papers*.)

WITNESS. [EVIDENCE.]

WOMAN. The political and social condition of men varies greatly in different countries. The condition of

women also varies greatly, though the variations in the condition of women are not univernally determined by the social or political condition of the men.

It is sometimes said that the condition of women is a kind of index to the degree of civilization in any given nation. The word civilization is somewhat indefinite, but perhaps we may understand the proposition thus: in those countries in which the social and political conditions of men nearly approach one another, the social position of the women will also be nearly the same. Thus in Great Britain and the United States of North America the social and political condition of men and the social condition of women are nearly the same. The differences are not worth noticing here.

The difference of sex satisfactorily explains the subordinate condition which women occupy in a political system. Their average strength is below that of the male, and those who become mothers have all the burden of the child before it is born and the chief labour of nurturing the child after it is born. The conformation of their body and its general more delicate organization disqualify them for many of the labours of the male sex, but qualify them for other labours of a different kind.

Among some nations the wife is the servant of the husband, and is compelled to do many things which the male could do better. This happens among some savage nations, and is justly considered a proof of barbarism; for it implies an abuse of power on the part of the male and a miscalculation of his own interest. Woman is adapted to be a solace to man when he is wearied, a help to him in his labours, and a companion in his moments of relaxation. She increases his happiness by co-operating with him in such ways as her strength and the peculiarities of her sex allow, not by labouring as he does or can do. The condition of women in nations called civilized approaches the condition of women in some nations called uncivilized, when they join in the labours of the man instead of performing the offices which are peculiarly suited to the female.

The exclusion of women from political

power, from the discharge of public functions, and from many other things that can only be done by mingling with men out of doors, is nearly universal, and it is founded on sufficient reasons. The difference of sex is the cause, and the necessary cause, of this almost universal practice. In some nations the principle of hereditary succession allows a female to take in course of descent the regal power and title: in some nations females are excluded. In a constitutional government where the administration is conducted by responsible agents of her who has the regal power and title, there seems no reason why a female should not exercise the kingly office as well as a male. In a monarchy properly so called, where the monarch is absolute, the administration of a woman is perhaps more likely to be bad than that of a male; though the reasons for excluding women from a participation in political power generally do not apply in their full extent to exclude a woman from exercising sovereign power.

Married women and unmarried women are not in the same condition in any country. The married woman by consenting to live with a man subjects herself to a control which is very different from that of a father or guardian. The purposes of marriage are among others the union of the sexes, the consequence of which is the procreation of children. The husband claims the exclusive possession of his wife's person, and obedience to his reasonable commands, which in general his superior strength enables him to enforce. It is the condition of married women in different countries which is comprehended under the term "condition of women" rather than that of unmarried women; and their condition comprehends the power of the husband over their person, over the children of the marriage, and over the property which the wife has at the time of marriage or may acquire during the marriage. In all these matters the positive law of different nations varies very much.

But it would be a great mistake if we were to judge of the condition of women in any country simply by viewing the positive rules of law as evidence of their

condition. There are many things in the relation of husband and wife, parent and child, for which no positive law has ever attempted to provide: these matters are governed by the positive morality, that is, by the usages and habits of any given society. It would not follow that if positive law gave women more power, they would also receive more respect and tender consideration from the stronger sex. On the contrary, if the two sexes were placed on the same footing by positive law, so far as it could be done, this would contradict the constitution of nature as indicated by the difference of sex, and would rather tend to deprive the female of the respect and consideration which she receives in most countries. There is some mean between the absolute subjection of the wife to the husband and the perfect equality by law, which appears to be most in harmony with the physical differences of sex, and best adapted to maintain a system of positive morality that shall conduce to the happiness of both.

As to unmarried women, so long as they are under parental authority, there are reasons in the relation of parent and child for maintaining the power of the parent by positive law to a certain extent; and positive morality supplies what law leaves defective. As women who are unmarried expect to marry some time, or at least may marry, it follows that in all nations in which any value is set on the chastity of women, they are by that very opinion excluded from an active life, which would require them to mingle freely with the other sex. If a single woman were a soldier or a sailor, or followed any other occupation which required her to mingle with men, she could not preserve a reputation for chastity; and if she did preserve her chastity, she would not have the credit of it. If there are any branches of industry in which the males and females freely inter-mingle, and there are such, it is a necessary consequence that the opinion of the chastity of the females must be unfavourable, and in many cases the opinion must be correct. Usage might establish an indifference to the chastity of women, and they might still be able to get hus-

bands, though generally reputed to be unchaste, and often known to be unchaste; and such a condition of society, arising from other causes than those here mentioned, is described by Herodotus (i. 93). Viewed as a portion of the positive morality of any nation, such a usage is faulty because contradictory to the notion of marriage, which implies a regulated commerce of the sexes and a recognised paternity for every child that is born.

The sexual difference then is the ground for a separation of males and females in many of the labours which are essential to the existence and sustenance of both. The union of the male and female in marriage is a just ground for limiting the wife's legal capacity to do certain acts and relieving her from some legal duties, which acts as an unmarried woman she might do, and which duties as an unmarried woman she might owe. The Roman system went further, and placed unmarried women who were of full age and free from parental authority under a kind of tutelage, not with a view of limiting their legal capacity, but in order to save them from fraud. The ground of this is in some passages stated to be the general infirmity of the sex, which, however, resolves itself into the difference of sex, and the consequent danger which on that account there is of a woman being overreached. The Roman law was here wiser than the English.

The condition of a married woman in England, Scotland, and in ancient Rome, is discussed under WIFE. The reader may collect some information on the condition of women in various countries from the following work: Laboulaye, *Recherches sur la Condition Civile et Politique des Femmes*, &c., Paris, 1843; but this and other works of a like kind must be read with caution, if a man would avoid making false inferences from the positive law of any given country.

**WOODS AND FORESTS.** A considerable portion of the royal revenue consisted formerly of the rents and profits of the crown lands, which comprised numerous lordships and honours, together with forests and chaces: from the forests the principal source of profit lay in the

finer or amerciaments levied for offences against the Forest Laws. The demesne lands which were retained by the king, or which came to the crown by forfeiture or otherwise, and were farmed out to subjects, were originally very extensive; but owing to the generosity or the necessities of different kings, so large a part of them was granted away, that the Houses of Parliament frequently interposed in order to prevent the total alienation of the crown property. William III. had used the power of alienation so profusely, that upon the accession of his successor, it was enacted (1 Anne, st. 1, c. 7) that no grant or lease should be made of any crown lands for a longer term than thirty-one years or three lives, except houses, &c., which might be let for fifty years.

By the 26 Geo. III. c. 87, amended by 30 Geo. III. c. 50, Commissioners were appointed to inquire into the state and condition of the woods, forests, and land revenues belonging to the crown. By the 46 Geo. III. c. 142 (altered by the 50 Geo. III. c. 65), an office of surveyor-general of his Majesty's works and public buildings was created; but this and some other offices are now incorporated with that of "the Commissioners of her Majesty's Woods, Forests, Land Revenues, Works, and Buildings" (2 Will. IV. c. 1, s. 1), who are commonly called "the Commissioners of Woods and Forests," which office or board owes its present permanent shape to the statute 10 Geo. IV. c. 50 (amended and extended by 2 Will. IV. c. 1; 2 & 3 Will. IV. c. 112; and 3 & 4 Will. IV. c. 69).

The Commissioners, who are not to exceed three in number, are appointed by letters patent (2 Will. IV. c. 1, s. 1). They are to make a declaration (5 & 6 Will. IV. c. 62, s. 2, in lieu of the oath required formerly, 2 Will. IV. c. 1, s. 6) that they will faithfully and diligently execute the duties of commissioners. Their salaries are fixed at 2000*l.* per annum for the chairman or first commissioner, and 1200*l.* for the other two (10 Geo. IV. c. 50, s. 11; 2 Will. IV. c. 1, s. 7). Only one of them is allowed to be a member of the House of Commons (2 Will. IV. c. 1, s. 11).

Their powers are very large. The

whole of the possessions (except advowsons) and land revenues of the crown in England, Ireland (10 Geo. IV. c. 50, s. 8), and Scotland (2 & 3 Will. IV. c. 112; 3 & 4 Will. IV. c. 69) are under their management; but the property therein still remains in the crown. (1 *Q. B. Rep.*, 352.) They are required to observe all the orders and directions of the Lords of the Treasury touching the exercise of their powers (2 Will. IV. c. 1, s. 3).

The Commissioners have the power of appointing and removing various officers, such as receivers, surveyors, &c., whose salaries however are fixed by the Treasury (10 Geo. IV. c. 50, s. 12). They may also appoint stewards of the royal hundreds and manors to hold courts, and different manerial and forestal officers to preserve game, fish, &c.; and they may grant licences to hunt, fish, &c. (*Id.*, s. 14).

They are empowered to grant leases of any part of the crown possessions for thirty-one years (10 Geo. IV. c. 50, s. 22); or, in case of houses, buildings, &c., or building-land, for ninety-nine years (*Id.*, s. 23); but this power of leasing does not extend to the royal forests in England (*Id.*, s. 25), except for the purpose of making railroads (*Id.*, s. 97). The leases must contain certain specified provisions, and the lessees are not to be made punishable for waste, except in leases of mines, and at the option of the Commissioners, in leases for ninety-nine years (*Id.*, s. 27). The leases are to be granted at a rack-rent, and no fine is to be reserved (*Id.*, s. 28), except in building-leases, in which a nominal rent may be reserved for the first three years (*Id.*, s. 30), and a fine may be taken not exceeding one-third of the rent (*Id.*, s. 31).

They may also sell any part of the crown possessions, except the forests (*Id.*, s. 34), according to a mode pointed out (s. 35); and they may also sell rents, or manerial or forestal rights, to corporations, or trustees of incapacitated persons, who have estates subject thereto (ss. 39, 40).

They may exchange or purchase lands, &c. (*Id.*, ss. 42, 52, 98).

They are declared to be exempt from

all personal responsibility as to any covenants or contracts which they may enter into in their official character (*Id.*, s. 17).

All deeds relating to lands, &c. leased, &c. by the authority of the commissioners are required to be enrolled in the office of Land Revenue Records and Inrolments (10 Geo. IV. c. 50, s. 63; 2 Will. IV. c. 1, ss. 16, 18, 21), and to be certified by the commissioners to parliament (10 Geo. IV. c. 50, s. 125); and all conveyances and sales respecting such lands are to be free from stamp and auction duty (10 Geo. IV. c. 50, ss. 67, 68.)

The Commissioners are also empowered to give certain notices and claims, and to authorize entries on land for breach of covenant, &c. (10 Geo. IV. c. 50, s. 92), and to compound, in certain cases, for rent (*Id.*, s. 93).

Their accounts are to be audited by the commissioners for auditing public accounts, under the 25 Geo. III. c. 52 (10 Geo. IV. c. 50, s. 19).

The receivers appointed by the Commissioners of Woods and Forests must be land-surveyors (*Id.*, s. 80). They are required to account at stated periods to the Commissioners (*Id.*, s. 81), and to transmit all sums received monthly (s. 84); and they are empowered to distrain for rent (s. 90).

Notwithstanding the management of the crown lands is thus vested in the Commissioners, and the general power of alienation has been taken from the crown, a power is reserved to the crown to grant sites for churches, chapels, and burial grounds, not exceeding five acres in extent, or 1000*l.* in value (10 Geo. IV. c. 50, s. 45); and by 1 & 2 Will. IV. c. 59, s. 1, churchwardens and overseers are empowered, with the consent of the Lords of the Treasury, to inclose a portion not exceeding fifty acres of any forest or waste lands belonging to the crown, lying in or near their parish, for the purpose of cultivating the same for the use of the poor.

Besides this general control over the crown lands, certain powers are given to the Commissioners which are connected with the execution of the Forest Laws. The powers and authorities belonging to the offices of wardens, chief-justice



and justices in eyre (which were abolished upon the termination of the then existing interests by 57 Geo. III. c. 61), are vested in the First Commissioner (10 Geo. IV. c. 50, s. 95); and the commissioners are also empowered to make compensation to parties for old encroachments made upon the royal forests where they have been in uninterrupted possession for ten years (*Id.*, s. 96).

The verderers of the royal forests are also required to make inquiry as to all unlawful inclosures, encroachments, &c. in their courts of attachment, and may impose fines upon the offenders (*Id.*, s. 100), who may however be proceeded against by the ordinary course of law (s. 103). The verderers may appoint regarders, under-foresters, and other officers of the forests and courts (s. 101), and may inquire into their conduct, and fine them for neglect of duty (s. 102). Other penalties may be recovered before a justice of the peace (s. 104); and all such fines and penalties are to be applied to the expenses relating to the forests (s. 105).

As to the general revenue arising from the letting, &c. of the crown lands, the commissioners are directed to pay in the moneys received by them, to a proper account with the Bank of England and Ireland respectively (10 Geo. IV. c. 50, s. 117, 118) and the chartered banks of Scotland (3 and 4 Will. IV. c. 69, s. 17); and the annual income (after certain deductions) is to be carried to the consolidated fund (10 Geo. IV. c. 50, s. 113; 3 & 4 Will. IV. c. 69, s. 16). The transfer of the revenue arising from the crown lands to the consolidated fund is however the subject of a special arrangement between the crown and the subjects, terminating with the life of the king or queen regnant in whose reign it is made.

The 10 Geo. IV. c. 50, contains some provisions peculiar to Ireland. Leases, grants, &c., of any of the small branches of the royal revenue (s. 128), and the powers appertaining to the chancellor and council of the Duchy of Lancaster (s. 130), are exempted from its operation.

The real property of the crown may be thus classified:—

1. Honours, manors, and hundreds, not in lease.

2. Other lands in the occupation of the crown, either for the personal convenience of the king or for the public service.

3. Forests, chaces, and wastes.

4. Lands, tenements and hereditaments, held of the crown by lease.

5. Fee-farm rents, issuing out of lands, tenements, and hereditaments, held of the crown in fee-simple.

Of the first, fourth, and fifth classes it would be impossible to attempt any particular enumeration; the fourth consisted, at the time of passing the statute 26 Geo. III. c. 87 (A.D. 1786), of about 130 manors, 52,000 acres of land in cultivation, 1800 houses in London and Westminster, and 450 houses and other buildings in other parts of England, exclusive of houses denised with manors or forests.

The second class comprises the following royal palaces and houses:—Buckingham Palace; St. James's Palace; the Pavilion at Brighton; Windsor Castle; the palaces of Hampton Court, Kensington, and Whitehall; the King's House at Winchester; the palace at Greenwich (converted into an hospital for seamen); Somerset House (used as public offices); the palace of Westminster (Westminster Hall, including the houses of parliament and courts of law). The following palaces and buildings have been pulled down and their sites used for other purposes:—Carlton House; the Mews; Newmarket Palace. The following parks are also included in this class:—St. James's, Hyde, Bagshot, Bushey, Greenwich, Hampton Court, Richmond, and Windsor.

In the third class are included not only the royal forests which have preserved their *jura regalia*, but several nominal forests and chaces, warrens, wastes, &c. The following is a list of the real forests:—In Berks, Surrey, and Wilts. Windsor Forest; in Essex, Waltham Forest; in Gloucestershire, the Forest of Dean; in Hampshire, Bere Forest, New Forest, and the Forest of Woolmer and Aliceholt; in Northamptonshire, Rockingham, Whittlewood, and Salcey Forests; in Nottinghamshire, Sherwood Forest; in Oxfordshire, Whichwood Forest.

There has arisen incidentally out of the proper duties of the department of Woods and Forests, since it was united

with the Board of Public Works, the important office of providing public walks and access to the national buildings and collections. This branch of administration has only been recognised of late years, and perhaps we owe it to our intercourse with the Continent, and especially with France, that it has been at all acknowledged. Twenty years ago Hyde Park and Kensington Gardens were the only public places of recreation open to the crowded and hard-worked population of London; since then, beside the improvements in those two places, and the formation of new streets and squares in those parts of the metropolis of which the land either belongs to the crown or has been purchased by parliament for public improvements, there have been opened the large gardens of St. James's Park and the Regent's Park; Primrose Hill, at the north of the Regent's Park, and a large piece of land at the north-east end of London, called 'Victoria Park,' have been purchased for public convenience. The palace and grounds of Hampton Court have been repaired and ornamented, and have been thrown open gratuitously to the public, and the collection of pictures has been arranged: for all this the nation is indebted to the department of Woods and Forests.

WOOL. [TARIFF.]

WORKHOUSE. [POOR LAWS.]

WOUNDING. [MAIM.]

WRECK. [FRANCHISE; SHIPS, p.

704.]

WRIT, a law term, which in its proper signification means a *writing* under the king's seal, whereby he confers some right or privilege, or commands some act to be done. Writs are either *patent* (open, commonly called *letters patent*, *literæ patentēs*), which are not sealed up, but have the great seal attached to them; or *close* (*literæ clausæ*), which are, or are supposed to be, sealed up. The former are addressed to all persons indiscriminately, generally in these terms—"To all to whom these presents shall come;" the latter are directed to some officer or other individual. Of the former kind is the creation of a peer by patent, which is a royal grant of peerage; of the latter, the creation of a peer by writ, which is a

summons to attend the house of peers by the style and title of some barony.

*Writ* in its ordinary and more limited sense is a term applicable to process in *civil* or *criminal* proceedings. Civil writs are divisible into *original* and *judicial*: original writs issue out of the Court of Chancery, and give authority to the courts, in which they are returnable, to proceed with the cause; judicial writs are awarded by the court in which the action is already pending. These are again subdivided into *mesne* and *final*. Original writs (which now, except in the few *real* actions still preserved, have been superseded by the writ of summons) used to contain a *brief* statement of the plaintiff's alleged cause of action; and such a writ was called in law Latin *breve*, in law French *brief*: and this term was afterwards applied to judicial and other writs. Original writs issuing from Chancery were always witnessed, or *tested*, in the name of the king; judicial writs issued from that one of the superior common law courts in which the original writ was made returnable, and were tested in the name of the chief judge of such court. In cases where the plaintiff seeks to recover a sum under 40*s.*, he may bring his suit in the county-court, or court-baron, in which no royal writ is necessary, but the suits therein commence, not by original writ, but by *plaint*, which is a statement of the party's cause of action in the nature of a *declaration*.

There are many kinds of writs, some of the more important of which may be here mentioned. There is the writ to the sheriff of a county to elect a member or members of the Commons' House of Parliament, in case of a vacancy or general election, which issues upon the warrant of the lord chancellor or in certain cases of the speaker of the House of Commons. The writ of *habeas corpus* (*ad subjiciendum*), which is directed to any person who detains another, commanding him to produce the body of the prisoner at such a time and place, together with the cause of his caption and detention, to do, submit to, and receive (*ad faciendum, subjiciendum, et recipiendum*) whatever the court or judge by whom the writ is awarded shall think fit. [HABEAS CORPUS.] There

are various other writs of *habeas corpus*, for the purpose of bringing up prisoners to be charged in execution, to give testimony, &c.—the writs of *subpœna ad testificandum*, by which a party is commanded to appear at the trial of a cause, to give evidence under a *nominal* pecuniary penalty; and of *subpœna duces tecum*, by which the party is commanded to bring certain specified documents for the purpose of the trial. There is also the writ of *subpœna* in equity, whereby the defendant in a suit is commanded to appear and answer the plaintiff's bill. A defendant privileged from the particular suit, or from being sued except before some other tribunal, is entitled to a writ of *Privilege*, by which the court is required to discontinue the suit. In modern times a party is allowed his privilege without suing out any writ of privilege. The new *Natura Brevium* of the Most Reverend Judge, Mr. Anthony Fitz-Herbert, contains a great variety of writs.

**WRIT OF ERROR.** There may be a writ of error for an alleged mistake in the proceedings of a Court of Record. The writ may be for matter of fact or of law. In the case of an alleged error in fact the writ is addressed to the court which has given the judgment and the correction of the record is left to it. In the case of an alleged error in law, a writ of error must be sued out of the common law side of the Court of Chancery, and it is addressed to the chief justice of the Queen's Bench or Common Pleas, or to the chief baron of the Exchequer, in one of which courts it is alleged that the error has been made. The writ commands the chief justice of the court in which the error is alleged to have been made to send a copy of the record to the Exchequer Chamber to be examined there. The writ of error on any judgment of the Queen's Bench, Common Pleas, or Exchequer is returned only before those judges of the two courts in which the alleged error has not been made (1 Wm. IV. c. 70); and there is no writ of error from the Exchequer Chamber except to the House of Lords.

In criminal cases there is a writ of error from all inferior courts to the Queen's Bench and from that to the House of Lords.

**WRIT OF INQUIRY.** In cases where a plaintiff seeks to recover a specific chattel (as in the action of *Detinue*), or a specific sum of money (as in *Debt*), if the defendant allows judgment to go against him by default, this is considered as an admission that the plaintiff is entitled to what he claims; and the judgment therefore is final in the first instance, provided the plaintiff is content to take a small nominal sum for the damages resulting from the detention of the chattel or the debt. But where a plaintiff only seeks to obtain damages for an injury done to his person or his real or personal estate, or for the non-performance of a promise, if the defendant lets judgment go by default, this, though an admission that the plaintiff has a cause of action, does not operate as an admission of the amount of damages to which he is entitled; and such judgment is called interlocutory. In such cases, and also where the plaintiff seeks to recover substantial damages for the detention of a chattel, or of a debt, the intervention of a jury is required in order to ascertain for what damages the plaintiff is entitled to have final judgment. For this purpose, a *judicial* process, called a *writ of inquiry*, issues to the sheriff commanding him to summon a jury to inquire what damages the plaintiff has sustained. If the plaintiff offer no evidence before the jury, a verdict must be found for nominal damages, as existence of *some* damage is admitted.

When the *inquisition* (or finding of the jury) is returned, the plaintiff is entitled to judgment for that amount. In some cases where the amount of damages is readily ascertainable, as being a mere matter of calculation, such as in actions upon bills of exchange, upon covenants for the payment of a certain sum, and the like, the court, instead of directing a writ of inquiry, will refer the matter to one of its officers to compute the amount of principal and interest due to the plaintiff, for writs of inquiry are merely to inform the court, who may assess the damages themselves, if they think proper, after interlocutory judgment has been obtained.

**WRIT OF SUMMONS.** [WRIT.]

**WRIT OF TRIAL.** All trials of causes in the superior courts took place formerly either at *bar* before the whole court, or at *nisi prius* before one of the judges of the court, or a judge or serjeant named in the commission of assize; but now, by the 3 and 4 W. IV., c. 42, s. 17, in any action depending in any of the superior courts for any *debt* or *demand* in which the sum sought to be recovered and indorsed on the writ of summons shall not exceed 20*l.*, the court, or a judge (if satisfied that the trial will not involve any difficult question of fact or law), may order the trial to take place before the sheriff of the county where the action is brought, or some judge of an inferior court, and for that purpose a writ shall issue (called the Writ of Trial) directed to the sheriff or such judge, commanding him to try the cause before a jury, and to return such writ with the finding of the jury thereon indorsed. The statute applies only to actions for a *debt* or *demand* indorsed on the writ of summons; it does not therefore extend to cases where the action is brought for a wrong, or where the demand, being for unliquidated damages, the amount claimed cannot properly be indorsed on the writ of summons. (3 Mann. and Gra. 850.) The proceedings under the writ of trial, when directed to the sheriff, usually take place before his under sheriff or other his deputy; and they are conducted in the same manner as at a trial at *nisi prius*: and the court will grant a new trial for the same causes as if the trial had been before one of the superior judges; but a new trial will not be granted upon the ground that the verdict is against the evidence, where the amount of such verdict is less than 5*l.*, unless such verdict be manifestly *perverse*.

**WRITER**, in Scotland, is a term of nearly the same meaning as attorney in England, and is generally applied to all legal practitioners who do not belong to the bar, although it has of late become customary to substitute for it the term solicitor. As special exceptions, the body who in Edinburgh enjoy, concurrently with writers to the signet, the privilege of conducting cases before the Court of Session, the Court of Justiciary, &c., are

called solicitors of supreme courts (abbreviated S. S. C.), and the practitioners before the sheriff court of Aberdeen are by local custom called advocates. In each county there is generally a society of writers privileged to practise in the sheriff court and in the other local judicatories, who frame their own bye-laws, and regulate the terms of admission to their body. Individually, they are responsible for their conduct to the local judges before whom they practise; and as bodies they are, on the one hand protected from the infringement of their privileges by unlicensed persons, and, on the other, liable to judicial control if they attempt unduly to restrict the means of admission to their privileges.

**WRITER TO THE SIGNET**, abbreviated W. S., is the designation of the members of the most numerous and important class of attorneys or procurators in Scotland. The writers to the signet, in common with the solicitors of supreme courts, and with one or two smaller bodies, the privilege of conducting cases before the Court of Session, the Court of Justiciary, and the Commission of Teinds. Their peculiar privilege, however, is that of preparing the writs which pass the royal signet. The signet was a seal or die under the control of the secretary of state, with which the writs by which the king directed parties to appear in court, or ordered them to obey the decrees given against them, and other executive instructions, were stamped for the sake of authentication. In the sixteenth century, the persons who were entitled to present the writs which received the impression of the signet are supposed to have been the clerks in the secretary of state's office; and it is not known how or precisely at what time the persons who transacted this department of official business became converted into a body of private practitioners. Since the union of 1707, the signet has been under the disposal of the Court of Session; but down to about the middle of last century the keeper of the signet was deputed by the secretary of state for the home department. Since that time it has been appointed under the great seal,

and he names a deputy, who is a member of the society of writers to the signet, and by usage presides at their meetings. In the general case the summons by which an ordinary action is brought into the Court of Session requires to be signeted, and to be, as a preliminary, signed by a writer to the signet; although a member of one of the other privileged bodies may conduct the case. Advococation [ADVOCATION] and some other analogous classes of procedure, required formerly to have the interposition of the signet; but this step in the procedure was abolished by 1 and 2 Vict. c. 86. In the various forms of execution against person and property, the signet was, until lately, a prominent feature; but, unless in some special cases, it has been dispensed with by the Act 1 and 2 Vict. c. 114. In these departments of legal practice the writers to the signet now possess few privileges which are not shared by the other practitioners before the supreme courts. They still retain their privileges as to summonses, and they have the exclusive right of presenting petitions in exchequer, or of presenting, through the judges acting in exchequer, indorsed drafts of the writs passing under the great and other seals in Scotland appended to crown charters, appointments to offices, &c. They have thus a monopoly of the business of making up the titles of the crown vassals or freeholders in Scotland, and this circumstance, added to their skill and respectability as a body, has put the greater part of the conveyancing of the country in their hands. The society require of their in-ants an apprenticeship of five years, with a curriculum of university study, which includes two sessions of attendance, the one at Latin and the other at the other literary class, and four courses of attendance at law classes. The expenses connected with apprenticeship amount to about 380*l.*, and additional fees to the extent of 140*l.* are incurred on entering the society. The writers to the signet possess a library, amounting, it is supposed, to between forty and fifty thousand bound volumes, distributed in two large halls. The collection was commenced in 1755, by the purchase of some old books, to which works on other sub-

jects were added in 1778. It is supported by an annual grant by the society, which fluctuates with the state of its funds, and has in some years exceeded 2000*l.* The eminent men who have successively acted as librarians, have made praiseworthy and successful efforts to obtain the most useful works, and to prevent the funds from being wasted in the purchase of books at random. They have kept in view in many cases the acquisition of those books which are wanting to the advocates' library, and as the two institutions are within the same range of buildings, and are both liberally laid open to those who wish to consult books for literary purposes, the writers to the signet have thus performed an essential service to the literature of Edinburgh.

## Y.

## YEAR-BOOKS. [REPORTS.]

YEOMAN, YEOMANRY CAVALRY. Of the various derivations proposed for the word yeoman—*jung man*, young man; *jemand*, any one; *gemein*, common; *goodman*—perhaps "*gemein*" or "*common*" is the most probable. A yeoman is at the head of the classes beneath gentlemen; he is in legal sense a *probus et legalis homo*, who may dispense of his own freehold 40*s.* yearly. In an ancient statute (20 Ric. II. c. 2, 1326) they ("*Vadlez appelez yomen*") are prohibited, in common with all other persons under the rank of an esquire, from wearing any lord's livery unless they form part of the lord's household; and Fortescue (c. 29), who wrote somewhat more than half a century after the passing of that act, says that there are yeomen (*valetti*) who can spend out of their patrimony 600 skutes a-year, a sum equal, according to some computations, to 130*l.* The term yeoman is used in inferior offices about the palace; and there is a body-guard called the yeomen of the king's guard, established by Henry VII., and by some writers considered the first approach towards a standing army, which attends the king upon state occasions. It consists of 100 men habited in the costume of the sixteenth century, and commanded by a captain and other officers. The vulgar name of beef-eaters,

by which they are known, is a corruption of *buffetiers*, from their having been stationed in state banquets at the buffet or sideboard. During the long war consequent on the French revolution, and whilst this country was threatened with invasion, there was embodied in almost every county a mounted force under the name of Yeomanry Cavalry. It was subject to the same regulations, when on service, as the militia, and consisted of volunteers, of whom a large proportion were gentlemen or wealthy farmers; they were mounted and in most respects equipped at their own expense; but they received pay whilst in actual service, and there was some small allowance made by the crown towards the regimental expenses, such as the permanent pay of non-commissioned officers. They were commanded by the lord-lieutenant of the county, who granted commissions to the subaltern officers.

The first act for embodying corps of volunteers was passed in the spring of 1794 (34 Geo. III. c. 31). It enacts that all persons who may, during the war then raging, voluntarily enrol themselves under officers holding commissions for that purpose from the king or from the lieutenants of counties, shall be entitled to receive the pay, and shall be subject to the same discipline by courts martial, composed of volunteer officers, as troops of the line, if, on being called upon by the king in case of actual invasion or appearance of invasion, they shall march out of their own counties or assemble within it to repel such invasion; or if they shall march at the command of the king or of the lieutenant or the sheriff of the county to suppress riots or tumults within it or the adjacent counties. The

act exempts volunteers from the militia: it gives power to magistrates to billet the non-commissioned officers and drummers on tavern-keepers; and grants to commissioned officers a right to half-pay, and to non-commissioned officers the benefit of Chelsea Hospital if they are disabled when on actual service.

In the year 1798 another act was passed (38 Geo. III. c. 51), to facilitate the training of volunteer corps of cavalry, who are called in the title to the act, though not in the body, "*yeomanry cavalry*." It authorizes the billeting of the privates when called out to be trained, and it exempts from taxation the horses used in the service. After the short peace in 1802, the provisions of the preceding acts were renewed (42 Geo. III. c. 66), and the existence of the volunteer corps of cavalry (called by this act for the first time "*yeomanry cavalry*") was revived or continued, without reference, as in the previous statutes, to the then existing war.

Of late years, although many of these yeomanry regiments still exist, they are rather maintained for the purpose of amusement and good fellowship than for any practical service.

According to a Parliamentary Return, there were, in 1836, 338 troops of yeomanry cavalry, including 1155 officers and 18,120 men, at a cost of about 100,000*l.* a-year to the nation. In 1838, the number of troops was reduced to 251, and the privates to 13,594. Between the years 1816 and 1838, the average annual expense of maintaining the yeomanry corps was 128,000*l.*; the greatest cost being in the years 1820, 1821, and 1822, when the annual average exceeded 192,000*l.*

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